

VOL. 1, PAGES 1 - 345

EXHIBITS 1 - 9

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
CASE NO. 1:97 CV 1422

Iron Workers Local Union No. 17)
Insurance Fund, et al.)
v.)
Philip Morris Incorporated, et al.)

COPY

Deposition of W. Kip Viscusi, Ph.D.
Monday, December 14, 1998
Goodwin Procter & Hoar, LLP
Exchange Place - 17th Floor
Boston, Massachusetts

***** Reporter: J. Edward Varallo, RPR *****

JONES FRITZ & SHEEHAN

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JONES FRITZ & SHEEHAN

51956 8294

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for Defendants Philip Morris, et al.

ALSO PRESENT:

Albert Maher, Videographer

Jones Fritz & Sheehan

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617/542-0039 Fax 617/542-2119

JONES FRITZ & SHEEHAN

P R O C E E D I N G S

9:23 a.m.

THE VIDEOGRAPHER: Here begins videotape number 1 in the deposition of W. Kip Viscusi in the matter of Ohio Iron Workers v. Philip Morris in the U.S. District Court, Northern District of Ohio, Case No. 1:97 CV 1422. Today's date is 12/14/98. The time on the monitor is 9:21. The operator today is Albert Maher, contracted by Jones Fritz & Sheehan, 210 South Street, Boston, Mass. This video deposition is taking place at Goodwin Procter & Hoar and was noticed by Mike Withey of Stritmatter Kessler & Withey.

MR. WITHEY: It's Stritmatter Kessler Whelan & Withey.

THE VIDEOGRAPHER: Please voice-identify yourselves and state who you represent.

MR. WITHEY: Mike Withey on behalf of the plaintiffs.

MR. ATKESON: Tim Atkeson on behalf of the defendants.

JONES FRITZ & SHEEHAN

51956 8296

09:22:52

1

THE VIDEOGRAPHER: The court reporter

2

today is Ed Varallo of Jones Fritz & Sheehan.

3

Please begin.

4

W. KIP VISCUSI, PH.D.,

5

having been first duly sworn on oath,

6

was examined and testified as follows:

7

EXAMINATION

8

BY MR. WITHEY:

9

09:23:20

10

Q. My name is Mike Withey. I represent the
plaintiffs in this action. I have some questions

11

for you today. If you don't understand any

12

question or feel it's too vague to answer, will you

13

not hesitate to ask me to rephrase it?

14

A. Okay.

9:23:30

15

Q. You understand that you are under oath

16

and this is a deposition taken pursuant to the

17

Federal Rules of Civil Procedure and that

18

everything we say will be taken down and could be

19

used at the time of trial?

9:23:38

20

A. All right.

21

Q. I assume if you answer the question, then
you feel you are capable of doing it and without
further clarification. Is that agreed?

22

23

A. All right.

24

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W. Kip Viscusi, Ph.D.

19:23:50 1 Q. Do you prefer to be called Mister or
2 Doctor?

3 A. Doctor.

19:24:00 4 Q. Doctor, I have been provided with a
5 curriculum vitae that has been marked as Exhibit 1
6 to your deposition, and this curriculum vitae also
7 contains a description of the case list of the
8 testimony that you've given in other matters. Is
9 that a fairly complete and accurate curriculum
19:24:24 10 vitae and case list, Doctor?

11 A. Well, the bibliography is about a year
12 and a half old.

13 Q. Do you have a more recent curriculum
14 vitae that you could provide to Mr. Atkeson, sir?

15 A. Yes.

16 MR. WITHEY: And do you mind then
17 having this marked as exhibit -- The curriculum
18 vitae would be Exhibit 5 to the deposition. Any
19 objection, counsel?

19:24:50 20 MR. ATKESON: None.

21 MR. WITHEY: We'll ask that it be
22 provided to Mr. Atkeson, who will then provide it
23 to the court reporter.

24 BY MR. WITHEY:

W. Kip Viscusi, Ph.D.

09:25:12 1 Q. Is the case list also outdated, sir?

2 A. I think it may miss a few personal-injury
3 cases out of St. Louis. But it includes all the
4 cigarette litigation.

09:25:24 5 Q. And do you have a more updated case list
6 then?

7 A. I don't have an updated case list.
8 I just have done a couple since then.

9 Q. Well, whatever your latest one is, could
09:25:34 10 you also provide that to Mr. Atkeson and that'll be
11 marked as part of Exhibit 5.

12 A. I'll track down the names of the cases
13 and send them to him.

14 Q. Thank you.

09:25:44 15 You are an economist. Is that
16 correct?

17 A. That's right.

18 Q. Have you reviewed any materials related
19 to this particular case in the federal court in the
09:25:54 20 State of Ohio?

21 A. I've just seen I guess a copy of the
22 complaint that was lodged against the defendants in
23 the case. But other than that, I've seen no
24 materials.

JONES FRITZ & SHEEHAN

51956 8299

W. Kip Viscusi, Ph.D.

J9:26:06 1 Q. Have you read any expert reports in this
2 case?

3 A. No.

4 Q. Have you read any depositions in this
5 case?

6 A. No.

7 Q. Have you looked at any of the briefs in
8 this case?

9 A. No.

10 Q. When did you read the complaint?

11 A. Last week.

12 Q. After you prepared your expert report.
13 Correct?

14 A. That's correct.

15 Q. And what information if any did you
16 derive from reading the complaint?

17 A. I was just curious about the nature of
18 the case. That was, you know, the sum total of it.

19 Q. I take it you didn't rely upon the
20 complaint in formulating any of your opinions in
21 this case. Is that correct?

22 A. No.

23 Q. Handing you what's been marked as Exhibit
24 2, is this your Rule 26 report in this case?

W. Kip Viscusi, Ph.D.

09:27:10

A. I believe it is, yes.

09:27:19

Q. And attached to it is a list of reliance documents. Is that correct?

A. Yes.

Q. Have you relied on any other documents other than what is contained within the last two pages of that exhibit?

A. Just to the extent that I draw upon all my work.

09:27:28

Q. Of course.

A. But this is a comprehensive list.

Q. All right. And have you submitted a report that is similar to Exhibit 2 in any other case?

09:27:38

A. Yes.

Q. How many other cases?

A. You have a list of all the cases I've done. I assume that such reports are required for all the Attorney General cases. I did a similar report in the Barnes case in Pennsylvania, but that was addiction, which is a different issue. So maybe a handful of similar reports.

09:27:52

Q. Are all of the opinions that you have presently that you expect to testify to -- Strike

W. Kip Viscusi, Ph.D.

09:28:06 1 that. Are all the opinions that you have reached
2 in this case then contained in Exhibit 2?

3 A. Well, this gives the broad punch lines,
4 but it doesn't give the documentation in support of
09:28:18 5 the opinions.

6 Q. Well, I just need to know if all the
7 opinions that you have reached are contained within
8 Exhibit 2, the first two pages of Exhibit 2.

9 A. At a general level, yes.

9:28:34 10 Q. Since you've submitted this report have
11 you added to the opinions that you've reached in
12 this case?

13 A. No.

14 Q. Have you done any further work other than
9:28:44 15 read the complaint since you wrote this report?

16 A. Well, I've generated some more statistics
17 than you have there, but these are just to augment
18 the same opinions that I have.

19 Q. Now, as I understand it, you are not an
9:29:14 20 expert in law. Is that correct? And by expert, in
21 these questions I'm going to mean that expert means
22 having an advanced course of study or higher
23 education, having a degree in the field including
24 membership in one or more societies related to the

W. Kip Viscusi, Ph.D.

09:29:32 1 field, and have published in the field or have done
2 research in the field. Using that definition of
3 expert, you are not an expert in law. Is that
4 correct?

09:29:44 5 A. I'm not a lawyer. I can't practice law.
6 I publish in law journals and I'm a professor
7 located solely within Harvard Law School, so
8 I don't know what you call that, but that's what
9 I am. So I can't, you know --

09:29:56 10 Q. Have you ever testified as a legal expert
11 in any court case?

12 No.

13 Q. For instance, you don't hold yourself out
14 to be an expert in issues of proximate causation,
09:30:08 15 theories of liability. Is that correct?

16 A. Theories of liability? Economic analyses
17 of them. But in terms of interpreting what the
18 legal rules are?

19 Q. Yes.

09:30:18 20 A. That's not what I do.

21 Q. Okay. You're not, for instance, an
22 expert in federal preemption. Correct?

23 A. Well, I've written about preemption but
24 I wouldn't say I'm a legal expert. I would talk

JONES FRITZ & SHEEHAN

51956 8303

W. Kip Viscusi, Ph.D.

09:30:26 1 about the economic consequences.

2 Q. You are not a doctor of medicine.

3 Correct?

4 A. That's correct.

09:30:32 5 Q. You've not studied epidemiology nor do
6 you hold yourself out to be an expert in
7 epidemiology. Is that correct?

8 A. I do a lot of risk analysis but I'm not
9 an epidemiologist.

09:30:42 10 Q. There is certainly a difference between
11 epidemiology and risk analysis. Fair enough?

12 A. Yes.

13 Q. You are not a historian. Correct?

14 A. That's correct.

09:30:50 15 Q. You've not published in historical
16 literature, nor have you gotten any advanced
17 degrees in history. Correct?

18 A. Well, apart from long-term trends in
19 smoking behavior and things like that, I've done
09:31:08 20 that. But I'm not a historian.

21 Q. You have not reviewed, as I understand
22 it -- Have you undertaken a systematic review of
23 tobacco industry documents?

24 A. No.

JONES FRITZ & SHEEHAN

51956 8304

W. Kip Viscusi, Ph.D.

09:31:16 1 Q. You understand that the tobacco industry
2 documents historically are available on the
3 Internet?

09:31:28 4 A. I believe many of these documents were
5 put on the Internet after the Minnesota case.

6 Q. Have you done any research of the
7 Internet to find out any of the tobacco industry
8 documents that may bear on the issues that you are
9 testifying about?

09:31:38 10 A. No.

11 Q. And you are not a -- I take it you have
12 not made a systematic review of tobacco industry
13 advertisements of cigarettes. Is that correct?

09:32:02 14 A. I've read analyses of these documents;
15 I've used some of these ads in my book. But I have
16 not independently done that review.

17 Q. You've not yourself done a systematic
18 review of tobacco industry advertisement over the
19 years. Correct?

09:32:17 20 A. Other than to find a few ads to put in my
21 book to illustrate things.

22 Q. And finding a few ads to put in your book
23 isn't in your judgment a systematic review of
24 tobacco industry advertisement. Is that fair?

JONES FRITZ & SHEEHAN

51956 8305

W. Kip Viscusi, Ph.D.

9:32:26 1 A. I didn't go year by year for sixty years
2 to track through the advertising. I looked at
3 different years.

9:32:32 4 Q. How many ads did you end up putting in
5 your book?

6 A. I think I only used a few pictures.

7 Q. How many were they drawn from?

8 A. There was an advertising firm whose name
9 I forgot that donated all of their cigarette-
10 related advertising materials to the Duke
11 University library, so that would be the set.

12 Q. Did you look at them all?

13 A. I didn't look at them all. I looked at
14 some. Had a research assistant cull some as well.

9:33:02 15 Q. How many did you look at?

16 A. I don't recall.

17 Q. You yourself.

18 A. I don't remember. This was a decade ago.

19 Q. Have you done any systematic review of
9:33:12 20 marketing practices of the tobacco industry from
21 let's say '53 to the present?

22 A. I've done analyses of prices and how
23 price changes have affected things. I've looked at
24 determinants of cigarette demand or sales over that

JONES FRITZ & SHEEHAN

51956 8306

W. Kip Viscusi, Ph.D.

19:33:36 1 period of time. But I'm not sure exactly what you
2 would include in terms of marketing practice.

3 Q. Have you seen any documents from the
4 industry indicating what their marketing practices
09:33:42 5 are?

6 A. I've seen some that were shown to me in
7 depositions, but I've not undertaken any
8 independent review of those things.

9 Q. Were they shown to you generally by
19:33:52 10 plaintiffs' counsel or by someone representing the
11 tobacco industry?

12 Plaintiffs' counsel.

13 Q. Have you ever been provided any documents
14 from the tobacco industry, internal documents, by
19:34:02 15 any defense counsel?

16 No.

17 Q. All the documents you've been shown from
18 the tobacco industry have been provided to you by
19 plaintiffs' counsel in one or more of the Attorney
9:34:12 20 General cases. Is that correct?

21 A. I believe so.

22 Q. Have you asked to see any documents from
23 the tobacco industry in connection with any of your
24 assessments or opinions in this case or any

JONES FRITZ & SHEEHAN

51956 8307

W. Kip Viscusi, Ph.D.

09:34:26 1 Attorney General's case?

2 A. No.

3 Q. You're not an expert in psychology. Is
4 that correct?

09:34:40 5 A. I'm an expert on risk perception, and it
6 depends on what you want to call that. But I am
7 not a psychologist. I have no degree in
8 psychology. On the other hand, I have published
9 work that often psychologists read and I write in a
10 journal that includes psychologists on the board.
11 So I'm not a psychologist but I do risk perception.

12 Q. What journal is that?

13 A. Journal of Risk and Uncertainty.

14 Q. Do you hold yourself out to be an expert
15 in either child or adolescent psychology?

16 A. No.

17 Q. Now, when was the first time you
18 performed any work with any of the attorneys for
19 the tobacco industry?

09:35:42 20 A. I was at Duke University, so that would
21 be four years ago, roughly. I'm guessing, but that
22 would be generally the ballpark with these
23 particular attorneys.

24 Q. Well, I'm asking about any attorneys.

W. Kip Viscusi, Ph.D.

09:35:56 1 A. That would be when I was at Northwestern
2 University in the mid 1980s and that would be with
3 Jones Day out of Cleveland.
4 Q. And what was the purpose of your work for
09:36:12 5 Jones Day out of Cleveland at that time?
6 A. They wanted to discuss with me my work on
7 risk perception, how people think about risk.
8 Q. Did you do so?
9 A. I did. I met with them, had lunch with
09:36:26 10 them.
11 Q. How many meetings did you have with
12 attorneys from Jones Day pursuant to that project
13 in the mid 1980s?
14 A. That was the first meeting.
09:36:38 15 Q. I asked you how many meetings did you
16 have.
17 A. After I met with them or before?
18 Q. After your first meeting, did you have
19 any other meetings?
09:36:52 20 A. Oh. I went to Cleveland at least once.
21 I'm not sure how many more meetings I had. Maybe
22 I had a couple more after the first meeting.
23 Q. How long did that engagement last?
24 A. I don't recall. I prepared a report,

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W. Kip Viscusi, Ph.D.

9:37:16 1 sent it in. But I believe it was completed when
2 I was still at Northwestern.

3 Q. When did you leave Northwestern?

4 A. 1985. No, '86. No, '88. So it was
9:37:40 5 around -- I did the work originally for them
6 somewhere before '88 and left in '88.

7 Q. What was the nature of that work?

8 A. Well, mostly it's discussing the work on
9 risk perception, what people had done on risk
9:37:54 10 perception. So a lot of it was not related to
11 cigarettes. I also obtained from them the 1980s,
12 what was it, '84, '85 Audits & Surveys data,
13 I guess it's '85, and did an analysis of that data.

14 Q. And that data is referred to in your
9:38:18 15 reliance materials as number 2. Is that correct?

16 MR. ATKESON: Let me just note for
17 the record that there's a typo on that and it
18 should say 1985 on the date for that document, not
19 1995, which it says. I spoke to your office and
9:38:40 20 told them that, and just so it's clear on the
21 record.

22 THE WITNESS: But that's it.

23 MR. WITHEY: Okay.

24 BY MR. WITHEY:

JONES FRITZ & SHEEHAN

51956 8310

W. Kip Viscusi, Ph.D.

09:38:48 1 Q. And who at -- This apparently was a
2 survey about smoking. Is that correct?

3 A. That's correct.

09:38:56 4 Q. And you have recited that survey in a
5 number of your published articles. Is that
6 correct?

7 A. That's correct.

09:39:00 8 Q. And what was the name of the individual
9 that you worked with on that project?

10 A. Barbara Kacir.

11 Q. Anybody else?

12 A. I met other people but she was the
13 contact person.

9:39:08 14 Q. What are the names of the other people
15 you met with?

16 A. I don't remember any of their names other
17 than hers.

9:39:24 18 Q. You understood that the survey was
19 prepared at the request of Arnold & Porter, Jones
20 Day Reavis & Pogue, and Shook Hardy & Bacon. Is
21 that correct?

22 A. Yes.

23 Q. And those are the three law firms that
24 were at the time representing the tobacco industry.

JONES FRITZ & SHEEHAN

51956 8311

W. Kip Viscusi, Ph.D.

9:39:28 1 Is that correct?

2 A. That's correct.

3 Q. And were they representing the tobacco
4 industry in litigation?

9:39:36 5 A. I believe it was the Cipollone case.

6 Q. And did you have any role in the design
7 or structure of the survey that was performed?

8 A. None.

9:39:52 9 Q. Did you generate any documents in
10 connection with that employment?

11 A. Yes.

12 Q. Which documents did you generate?

13 A. I did a reanalysis of the survey data to
14 see if the Audits & Surveys data analysis was
9:40:06 15 correct and essentially to push it.

16 Q. Did you provide that in written form to
17 the attorneys that had hired you?

18 A. Yes.

19 Q. Do you have a copy of that?

9:40:18 20 A. I don't think I do now, but I think it
21 showed up in Minnesota somewhere.

22 Q. Have you identified that as one of your
23 documents you've relied upon?

24 A. No.

JONES FRITZ & SHEEHAN

51956 8312

W. Kip Viscusi, Ph.D.

09:40:30 1 Q. How long was the reanalysis of the data?

2 A. I don't know. Thirty pages, fifty pages.
3 Somewhere in there. Under a hundred pages.

4 Q. And what was your purpose in doing this
09:40:40 5 reanalysis?

6 A. Well, I wanted to do different kinds of
7 analyses and --

8 (TELEPHONE RINGING)

9 MR. WITHEY: Let's take a moment.

09:40:52 10 MR. ATKESON: Conference room.

11 Peter? Tim. Just a second. I'll get him.

12 MR. WITHEY: Let's take a break.

13 THE VIDEOGRAPHER: Going off the
14 record. The time is 9:40.

09:46:50 15 (Short recess taken.)

16 THE VIDEOGRAPHER: Back on the
17 record. The time is 9:46.

18 BY MR. WITHEY:

19 Q. In addition to what we might call the
09:47:14 20 30-page reanalysis of data, did you submit anything
21 else in writing to any of the attorneys you were
22 working with at that time on this survey or other
23 topics?

24 A. Just bills.

JONES FRITZ & SHEEHAN

51956 8313

W. Kip Viscusi, Ph.D.

J9:47:22 1 Q. And do you recall what your compensation
2 was?

3 A. No.

4 Q. What was your rate of compensation at
5 that time?

6 A. I don't recall that either.

7 MR. WITHEY: We would like to get the
8 reanalysis of data, the thirty pages, and we'd ask
9 for it to be produced. To the extent to which he's
10 testifying about this survey done in 1985 that has
11 been marked or identified as one of your reliance
12 documents, we will ask that that be provided.

13 THE WITNESS: I never said I had it.
14 So I don't know if I have it, so....

15 MR. WITHEY: Could you see if you
16 have it? And if you have it, provide it to
17 Mr. Atkeson. If you do not have it, let him know
18 and we'll ask that Jones Day produce it or whoever
19 the lawyers were at the time.

19:48:08 20 MR. ATKESON: Okay. I don't have it
21 and this is the first I've ever heard of it, so I'm
22 not....

23 MR. WITHEY: See, that's why when he
24 was deposed before nobody happened to ask that

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

09:48:18 1 question, I guess. Is that fair to assume?

2 MR. ATKESON: I think you're wasting
3 a huge amount of time if you think that's going to
4 be of any value to you. If you want to spend a
09:48:26 5 half day doing that kind of stuff, I guess we can.

6 MR. WITHEY: We want the 30-page
7 document.

8 BY MR. WITHEY:

9 Q. Did you have meetings with any of the
09:48:32 10 attorneys working on this survey? And by "this
11 survey" we're talking about the 1985 Audits &
12 Surveys, Inc. survey. Other than the meetings
13 you've described, did you have meetings anywhere
14 else other than Cleveland?

9:48:48 15 A. Cleveland and Chicago.

16 Q. Now, are you aware that various documents
17 related to Jones Day and their representation have
18 been made a matter of record in the Minnesota case?

19 A. Yes. That's where this report is.

9:49:06 20 Q. It is?

21 A. Yes.

22 Q. Okay. Have you reviewed any other
23 documents from Jones Day?

24 A. No. No.

JONES FRITZ & SHEEHAN

51956 8315

W. Kip Viscusi, Ph.D.

9:49:20 1 Q. Have you had any contact with anyone from
2 the International Committee On Safety Issues,
3 ICOSI?

9:49:28 4 A. Nobody's identified themselves as coming
5 from that committee.

6 Q. Same question with respect to the Social
7 Acceptability Working Party.

8 A. Same answer, that nobody has identified
9 themselves as coming from that group.

9:49:40 10 Q. Have you ever heard of either of those
11 two groups?

12 No.

13 Q. Have you had any contact with anybody
14 from InfoTab, I-n-f-o-T-a-b?

9:49:52 15 A. Not that I know of, but it sounds very
16 computerese, so I'm not sure if they make computer
17 software we buy or something. But, no.

18 Q. No. They're a tobacco industry group.

19 A. No, I've had no contact with them to the
20 best of my knowledge.

21 Q. How about The Tobacco Institute?

22 A. The contact I've had with them, I asked
23 them for their annual report of data, the Tax
24 Burden on Tobacco, which I have used for

W. Kip Viscusi, Ph.D.

09:50:18 1 statistics, but I've had no dealings with them
2 otherwise.

3 Q. Do you recall who you had contact with at
4 The Tobacco Institute?

09:50:26 5 A. No. It's either I or my secretary would
6 call up and ask just for the latest copy.

7 Q. Have you had any contact with anybody
8 from the CTR, Council on Tobacco Research?

9 A. No.

09:50:36 10 Q. Do you know an individual named George
11 Berman?

12 A. No.

13 Q. Do you know a woman named Mary Covington,
14 formerly of Philip Morris?

09:50:46 15 A. No. May have read about her but I've
16 never met her.

17 Q. Do you know a Robert Tollison?

18 A. Yes.

19 Q. And what is your connection knowing him?

09:50:56 20 A. He's a professor at George Mason
21 University, and he and I were part of a
22 pharmaceutical research project together.

23 Q. To your knowledge was he ever employed by
24 the tobacco industry?

JONES FRITZ & SHEEHAN

51956 8317

W. Kip Viscusi, Ph.D.

9:51:14 1 A. Yes. I testified, he testified
2 separately with respect to the OSHA proposal that
3 there be regulation of tobacco smoking in
4 workplaces. I never read his testimony, discussed
9:51:30 5 anything with him. I just knew that he did this.

6 Q. What was the subject matter or content of
7 your testimony?

8 A. Benefits and costs of regulation.

9 Q. What conclusions if any did you reach?

9:51:40 10 A. I just calculated here are some of the
11 benefits, here are some of the costs.

12 Q. You didn't make a recommendation
13 policywise then?

14 A. I don't recall making a recommendation.

9:51:48 15 Q. Do you know if Mr. Tollison did?

16 A. I don't -- Never read his testimony,
17 never discussed what he was going to say with him.

18 Q. But you understood he'd testified on
19 behalf of the tobacco industry?

9:52:00 20 A. Or one of the law firms involved in
21 representing an industry group.

22 Q. And do you know of an economist named
23 Wagner, and I'm sorry, I don't have his first name,
24 who has --

W. Kip Viscusi, Ph.D.

09:52:14 1 A. Tollison and Wagner wrote the book on the
2 economics of the tobacco industry, but I don't know
3 Wagner other than that.

09:52:22 4 Q. And did you understand that he also was
5 employed as a consultant for the tobacco industry?

6 A. No, I didn't. Didn't know that.

7 Q. Do you know an individual named Aaron
8 Wildavsky, W-i-l-d-a-v-s-k-y?

09:52:38 9 A. He's now deceased. I met him a couple of
10 times at conferences and I reviewed one of his
11 books.

12 Q. And did you have an understanding he was
13 working as a consultant for the tobacco industry?

14 A. No, I didn't know that.

09:52:52 15 Q. Were you aware that he was writing a
16 chapter or a part of a piece of work on the
17 anti-tobacco organizations in this country?

18 A. No, I didn't know that.

09:53:08 19 Q. What was the conference or connection in
20 which you met him, if you know?

21 A. University of Virginia Law School
22 conference on liability. I was giving a paper, it
23 was a statistical analysis, he was there for some
24 other, you know, paper or reason. And I also saw

W. Kip Viscusi, Ph.D.

09:53:24 1 him at a conference in Washington, D.C. where he
2 was the luncheon speaker, but it had nothing to do
3 with cigarettes.

09:53:30 4 Q. Now, after your work in connection with
5 the survey about smoking was completed when you
6 left Northwestern, as I understand it, what was the
7 next time you had any employment or consulting work
8 on behalf of the tobacco industry either through
9 its law firms or through representatives of the
10 industry itself?

9:54:10 11 A. Yeah, I don't recall whether I had any
12 contact with them again when I was at Duke or not.
13 But I do know that I did my only few hours of
14 direct work for the industry itself in consulting
15 on the design of the warning label for Premier
16 cigarettes when I was at Duke.

17 Q. And what year was that?

18 A. I don't know. But it was right when
19 Premier was hitting the market.

9:54:20 20 Q. Did you design such a warning label?

21 A. I commented on the wording of it.

22 Q. What were your comments?

23 A. Well, it was a question of how to convey
24 the risk of starting a fire with this cigarette

JONES FRITZ & SHEEHAN

51956 8320

W. Kip Viscusi, Ph.D.

09:54:38 1 because the carbon tip once lit could fall out and
2 then create a fire hazard. So it was how to word
3 that risk.

09:54:44 4 Q. Were you asked to word any other risks on
5 Premier?

6 A. No.

7 Q. Had the Premier been tested as it relates
8 to its health risks?

09:54:56 9 A. I believe it had at that point. But
10 there was more testing that was undertaken that
11 showed up in that RJR compendium.

12 Q. And what were you paid, if you recall,
13 for the work -- Was that on behalf of RJR,
14 I assume?

09:55:12 15 A. RJR. A half day's work while I was
16 en route to a conference in western North Carolina,
17 so...

18 Q. How much were you paid for that half day
19 of work?

09:55:20 20 A. Not much. So it was, you know, whatever
21 my half day is multiplied by my hourly rate at the
22 time.

23 Q. And you don't know, don't remember what
24 that was either?

JONES FRITZ & SHEEHAN

51956 8321

W. Kip Viscusi, Ph.D.

09:55:26

1

A. No.

2

Q. Now, other than working for Jones Day on

3

the survey about smoking and working with R.J.

4

Reynolds on the Premier cigarette warning label,

09:55:40

5

what other work have you done on behalf of the

6

tobacco industry or any of its law firms?

7

A. Ever?

8

Q. Yes.

9

A. Well, we already have the OSHA public

09:55:52

10

hearings. That I mentioned.

11

Q. And when was that?

12

A. I don't recall. I was still at Duke

13

University, so it was over three years ago.

14

Q. Go ahead.

09:56:04

15

A. We have all the cases listed on this case

16

list that I've done on behalf of the tobacco

17

industry.

18

Q. Anything else?

19

A. I have consulted on general matters to

09:56:18

20

Covington & Burling. That didn't necessarily lead

21

to a deliverable, but.... Over the past few years.

22

Q. Anything else?

23

A. We worked for both, I guess for Jones Day

24

as related to these cases that's been going on for

JONES FRITZ & SHEEHAN

51956 8322

W. Kip Viscusi, Ph.D.

09:56:38

1 a while.

2 Q. Anything else?

3 A. I think that's everything.

09:56:50

4 Q. You've identified your contact on this
5 survey from the mid '80s. Who was your contact at
6 RJR on the Premier cigarette?

7 A. Bill Gould, G-o-u-l-d.

8 Q. And what was his position there?

9 A. He's a lawyer.

09:57:00

10 Q. For which firm?

11 A. I mean internal counsel.

12 Q. So he was in-house counsel for RJR?

13 A. Right, at that time.

14 Q. Any other contact there?

09:57:08

15 A. No.

16 Q. The OSHA public hearings, that was when
17 you were at Duke. Correct?

18 A. Yes.

19 Q. Which would have been what years?

09:57:18

20 A. At least three years ago.

21 Q. Well, from what year to what year is what
22 I was asking?

23 A. 1988 to 1996.

24 Q. And could you pinpoint that a little bit

JONES FRITZ & SHEEHAN

51956 8323

W. Kip Viscusi, Ph.D.

09:57:38 1 more specifically in terms of years?

2 A. If I were to guess, well, it would
3 certainly be the 1990s; '94, '93, somewhere in
4 there.

09:57:52 5 Q. And who was your contact in that matter?

6 A. Ernest Gelhorn.

7 Q. And who is Ernest Gelhorn?

8 A. He's a professor at George Mason Law
9 School. I believe he does independent legal
10 matters as well.

11 Q. And were you compensated for your
12 testimony?

13 A. Yes.

14 Q. Who compensated you?

15 A. He did.

16 Q. Do you recall how much your compensation
17 was for preparing for that testimony and giving it?

18 A. No. If I were to guess, it might be
19 \$10,000, but I don't really recall the exact
20 amount.

21 Q. Then you've worked on the tobacco cases
22 that are listed in your Exhibit 1. Correct?

23 A. That's correct.

24 Q. And who has been your contact for those

JONES FRITZ & SHEEHAN

51956 8324

W. Kip Viscusi, Ph.D.

09:58:36 1 cases?

2 A. Both Mr. Atkeson and Mr. Biersteker, but
3 I've dealt almost exclusively with Mr. Atkeson in
4 terms of working.

09:58:50 5 Q. Have you testified in any case?

6 A. No.

7 Q. You've given depositions in numerous
8 cases, Attorney General's cases. Correct?

9 A. I believe five of them.

09:59:02 10 Q. And is this the first time you've
11 testified in a union health and welfare fund case?

12 A. Yes.

13 Q. Are you designated in any other cases as
14 far as you know?

09:59:10 15 A. Not that I know of.

16 Q. Now, you said you've done some sort of
17 general consulting work with Covington & Burling
18 over the past few years. Is that correct?

19 A. Relating to cigarettes, yes.

09:59:24 20 Q. And what generally has been the subject
21 matter of your consulting work in that regard?

22 A. I don't know if I'm required to say.
23 It's not related to a case.

24 Q. Well, what is it?

JONES FRITZ & SHEEHAN

51956 8325

W. Kip Viscusi, Ph.D.

9:59:38

1

A. Just generally --

2

Q. Who at Covington & Burling?

3

A. David Remes.

4

Q. And who does he represent?

9:59:41

5

A. I'm not sure.

6

Q. But it relates to cigarettes. Correct?

7

A. Yes.

8

Q. It relates to smoking?

9

A. Right.

9:59:50

10

Q. Risk perception?

11

A. No; other matters.

12

Q. What does it relate to?

13

MR. ATKESON: Objection, counsel. If

14

he's a consulting expert on this I don't think

9:59:58

15

you're allowed to get into that.

16

BY MR. WITHEY:

17

Q. How much have you been compensated for
your work with Covington & Burling?

18

19

A. I don't know.

10:00:06

20

Q. Who would know?

21

A. David Remes.

22

Q. Anybody else?

23

A. Haven't told anybody else. I don't know

24

anybody else who would know.

JONES FRITZ & SHEEHAN

51956 8326

W. Kip Viscusi, Ph.D.

10:00:18 1 Q. You don't have a bookkeeper or a
2 secretary that gets the checks and deposits in the
3 bank from Covington?
4 A. I can tell you how much, you know, I made
10:00:25 5 from them this year. I don't --
6 Q. All right, tell me that.
7 A. No, I could look that up, but I don't
8 know off the top of my head.
9 Q. Someone would have that information in
10:00:36 10 your employ. Fair enough? Either you or someone
11 else. Fair enough?
12 A. Depends on how far back it goes. I don't
13 keep my historical records.
14 Q. Well, how far back does it go?
10:00:52 15 A. I think all of the records pre-Harvard
16 Law School are pretty much inaccessible for me.
17 Q. Well, how far back does your consulting
18 work with Covington & Burling go?
19 A. I had contact with another lawyer there
10:01:00 20 as well.
21 Q. Name?
22 A. I forget his name. I even forget the
23 matter.
24 Q. How long does that go back?

JONES FRITZ & SHEEHAN

51956 8327

W. Kip Viscusi, Ph.D.

10:01:14

1

A. A few years.

2

Q. How many years are a few?

3

A. Three, four, something like that. It's not a continuing thing. I did something for him a few years ago.

10:01:24

5

6

Q. Could you just tell me the general subject matter of your consulting work at Covington & Burling either with Mr. Remes or this other person that you don't know the name of?

7

8

9

10:01:36

10

11

Cigarettes.

12

13

14

10:01:46

15

16

I did with the other person. It may have been the same thing that I did with Ernest Gelhorn. He may have been just the contact that I worked with, so it may not have been another thing.

17

18

19

Q. Have you submitted any documents, reports, analyses to them that's not in the published literature?

10:01:56

20

21

A. No.

22

23

Q. Then you say you've worked with Jones Day on these cases. You're referring to the smoking or tobacco cases then?

24

A. That's correct.

JONES FRITZ & SHEEHAN

51956 8328

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in
EXHIBIT

W. Kip Viscusi, Ph.D.

10:02:08 1 Q. Is that different than your work with
2 Mr. Atkeson or Biersteker?

3 A. No, that's the same thing.

10:02:22 4 Q. Have you then described the totality of
5 your consulting or research or report writing or
6 testimony or work for or on behalf of the tobacco
7 industry and any of its components or law firms
8 representing them? Is there anything you've not
9 testified about that you recall?

10:02:36 10 A. I can't remember anything.

11 Now, I want to ask you about these
12 surveys and first of all I want to identify how
13 many surveys either you've completed or that you
14 have used or relied upon in formulating any
10:03:00 15 opinions in this case.

16 A. Is that a question?

17 Q. Surveys, yes. I want you to tell me how
18 many surveys either you yourself performed or on
19 your behalf or have relied upon in formulating your
10:03:20 20 opinions. I'm asking you just for the number.

21 A. I don't know the exact number. I know
22 there's four on cigarette smoking risks; there's
23 another one that I use for addiction. So there are
24 at least five that I rely upon.

JONES FRITZ & SHEEHAN

51956 8329

W. Rip Viscusi, Ph.D.

10:03:34 1 Q. Are all of those contained within your
2 Exhibit 2? Sorry. Exhibit 2, the reliance.
3 (Pause) And if so, please identify by number which
4 ones they are.

10:04:10 5 A. Well, the second thing on the list is the
6 '85 survey. My Public Perception Of Smoking Risks
7 paper talks about '85, '91 and '97 surveys.

8 Q. And could you identify the number of
9 that?

10:04:30 10 A. They're not numbered but it's the third
11 thing.

12 Okay.

13 A. Fourth thing also cuts across these
14 things.

10:04:40 15 Q. Well, I'm actually just asking you to
16 identify the documents related to the survey as
17 opposed to later reports of the survey. In other
18 words, if you refer to a survey in a publication,
19 I'm not interested in that. I'm just interested in
10:04:50 20 the documents that reflect either the survey
21 instrument, the design, the results, the data,
22 et cetera.

23 A. Well, a lot of these articles produce
24 tables and lots of times the table is the only

W. Kip Viscusi, Ph.D.

51956 8331

10:05:10 1 thing I kept so I don't have the output. But the
2 next thing after all the stuff I've already
3 mentioned would be the fifth thing; that's on the
4 addiction, the CPS. That gets everything in terms
10:05:26 5 of the survey. You know, we get codings for the
6 '85 and '97 later on down here, everything else
7 except for the Massachusetts survey, the 1998 Roper
8 survey, which is the last thing on the list. But,
9 you know, there's other things are directly related
10:05:40 10 to the survey like the 1997 Audits & Surveys report
11 here which is one, two, three, four, five from the
12 bottom.

13 Q. So as I understand it, let me see if
14 I have it right, there was a 1985 Audits & Surveys
10:05:50 15 survey --

16 A. Correct.

17 Q. -- called A Survey About Smoking that was
18 performed on behalf of Jones Day and the other law
19 firms?

10:06:00 20 A. Right.

21 Q. And then there was a 200-approximately-
22 person telephone interviews or call it survey that
23 you yourself performed in 1991 in North Carolina.
24 Is that correct?

JONES FRITZ & SHEEHAN

W. Kip Viscusi, Ph.D.

10:06:14

1

A. That's correct.

2

Q. And then the third one was a survey that was performed by Audits & Surveys in 1997?

3

A. That's correct.

10:06:30

5

Q. And the fourth one was your -- Well, did you do any other survey in 1998?

6

7

A. Yes, the Massachusetts Roper survey.

8

Q. Okay.

9

A. And then I also used the 1993 CPS survey.

10:06:44

10

Q. Is that a cancer prevention study survey?

11

A. No. It's a current population survey,

12

U.S. Department of Commerce, Bureau of The Census.

13

Q. Do you have any documents that -- Do you have the document by CPS on that?

14

10:07:04

15

A. I have my printout here.

16

Q. And then there was a fifth or I don't know what number it was but another survey related to addiction. Correct?

18

19

A. That was it.

10:07:12

20

Q. Oh, that was the --

21

A. The 1993 CPS, yes.

22

Q. Okay. So as I understand it, let's just talk about these five surveys. Is that the correct number?

24

JONES FRITZ & SHEEHAN

51956 8332

W. Kip Viscusi, Ph.D.

10:07:28

1 A. That's correct.

2 Q. All right. Now, could you tell me in
3 which of these surveys you yourself designed the
4 survey instrument or the structure of the survey?

10:07:46

5 A. 1995, I had no input on that survey
6 design.

7 Q. All right.

8 A. 1991, I did all of that survey design.

9 Q. All right.

10:08:00

10 A. 1997, Audits & Surveys incorporated my
11 questions from 1991 into the 1985 survey design.

12 Q. Were you involved in the design of that
13 or did they just kind of borrow from you?

14 A. They just borrowed it. I was not
15 involved in the design.

10:08:14

16 Q. And the questions that were asked by you
17 in 1991 that were used by Audits & Surveys in '97
18 were the only questions that were posed in '97.
19 Correct?

10:08:28

20 A. That's correct.

21 Q. There was other aspects of that survey
22 that you had absolutely nothing to do with.
23 Correct?

24 A. That's correct, because they were from

JONES FRITZ & SHEEHAN

51956 8333

W. Kip Viscusi, Ph.D.

10:08:36 1 the 1985 survey and my questions were sensitivity
2 tests essentially on the 1985 survey results.

3 Q. Okay. How about the 1998 -- Excuse me.
4 What about the 1993?

10:08:46 5 A. I had nothing to do with the '93 survey.

6 Q. And how about the 1998?

7 A. That one I worked with the survey firm on
8 every question and I drafted, either drafted first
9 drafts of most of the questions.

10:09:02 10 Q. What was the name of the survey firm?

11 A. Roper Starch Worldwide I think is the
12 name.

13 Q. Were the questions utilized in the 1985
14 survey also utilized in the Mass. Roper survey,
15 Massachusetts Roper survey?

10:09:22 16 A. A little bit. Some of the questions were
17 used, but this survey was much broader in its focus
18 and structured in a different manner.

19 Q. Other than the 1993 addiction survey,
10:09:44 20 were any of the other -- did any of the other
21 surveys ask questions about addiction, habituation?

22 A. No.

23 Q. Now, in your 30-page paper did you have
24 any comment on the appropriateness of the questions

JONES FRITZ & SHEEHAN

51956 8334

W. Kip Viscusi, Ph.D.

10:10:06 1 asked in the 1985 survey?

2 A. In which paper?

3 Q. The 30-page paper you submitted to Jones
4 Day.

10:10:14 5 A. No. I was just analyzing the data,
6 presenting tables and cross-tabs.

7 Q. Now, I'm going to ask you to focus on the
8 1985 survey. How were the respondents selected?

9 A. This was a national random digit dial
10:10:38 10 telephone survey.

11 Q. And there were three age categories. Is
12 that correct?

13 A. Yes.

14 Q. One age category was 16 to 21. Correct?

10:10:52 15 A. I believe so. I know 16 was the start
16 date; I'm not sure if it was 20 or 21.

17 Q. Would it be fair to characterize the 16
18 to 21 as representative of teenagers?

19 A. It includes teenagers 16, 17, 18, 19, so
10:11:10 20 three or four of the five or six years included
21 would be teenagers.

22 MR. WITHEY: Do you want to repeat
23 the question for him?

24 (The reporter read the question.)

JONES FRITZ & SHEEHAN

51956 8335

W. Kip Viscusi, Ph.D.

10:11:22 1 BY MR. WITHEY:

2 Q. Can you answer that question?

3 A. Yes. Teenagers 16 and over, yes.

4 Q. Well, it includes people who are not
10:11:32 5 teenagers. Correct?

6 A. Has more teenagers than non-teenagers.

7 Q. You're sure about that?

8 A. Yeah. If you're doing a random call, it
9 should pick up people in proportion to their
10:11:46 10 population representation.

11 Q. How many fit the 16 to 21 age category in
12 the 1985 survey?

13 A. I don't remember the number.

14 Q. How many of the 16 to 21 were 20 or 21?

10:12:00 15 A. I don't know that number.

16 Q. Could have been more than were 16 to 19.

17 Correct?

18 A. We have no reason to believe it's more.

19 Q. It could have been. Correct?

10:12:16 20 A. With a negligibly low probability.

21 Q. Well, in fact the survey was conducted by
22 asking the person who answered the phone was there
23 anybody else in the household that was 16 or above.
24 Correct?

JONES FRITZ & SHEEHAN

51956 8336

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in HUMPHREY

W. Kip Viscusi, Ph.D.

10:12:24

1

A. Yes.

2

Q. And if the person was 20, the answer would have been yes. Correct?

3

4

A. That's correct.

10:12:32

5

Q. But that didn't necessarily mean that was the person interviewed. Correct?

6

7

A. That's correct.

8

Q. And in fact there was no data kept on the age of the person responding other than in the three categories. Correct?

9

10:12:44

10

A. That's correct.

11

12

Q. So --

12

13

A. But there was a procedure to determine who would be participating in the survey. It was not just the person answering the phone.

14

10:12:50

15

16

Q. Correct. But I'm asking a different question. The question is: If the people doing the survey did not identify the age of the person responding other than in the three categories,

17

18

19

10:13:00

20

there would be no way of going back historically to figure out, well, how many of the 16- to 21-year-olds were in fact 16, 17, 18, 19, versus 20 and 21. Correct?

21

22

23

24

A. That's correct. I cannot prove an exact

JONES FRITZ & SHEEHAN

51956 8337

W. Kip Viscusi, Ph.D.

10:13:22 1 number of people in any given age within an age
2 category.

3 Q. Now, was it known to the respondents who
4 was doing the survey?

10:13:28 5 A. No, other than it was Audits & Surveys.
6 They did not know who funded the survey.

7 Q. Did Audits & Surveys know who funded the
8 survey?

9 A. I don't think any firm would carry out a
10:13:44 10 survey for free, so they would have to know they
11 were getting paid by somebody.

12 Q. Did they know they were getting paid by
13 lawyers for the tobacco industry?

14 A. The contact people at the firm would
10:13:54 15 certainly have to know that. Otherwise they
16 wouldn't know where their checks were coming from.

17 Q. Now, as I understand this survey, the
18 question was asked even though the smoking status
19 of the person that was responding was known.

10:14:26 20 Correct? Strike that. Was the smoking status of
21 the person who was answering the questions after it
22 was determined who would answer the questions, was
23 that known?

24 A. Yes.

JONES FRITZ & SHEEHAN

51956 8338

W. Kip Viscusi, Ph.D.

10:14:34 1 Q. And that was put in one of the boxes in
2 the questionnaire. Correct?

3 A. That's correct.

4 Q. And how was former smoker defined?

10:14:42 5 A. That was it: Are you a current smoker or
6 a former smoker?

7 Q. There wasn't any further definition of
8 former such as smoked for any given number of
9 years. Correct?

10:14:52 10 A. That's correct.

11 Q. The questions that were asked included a
12 question about their assessment of risk of smoking.

13 A. Correct.

14 A. That's correct.

10:15:20 15 Q. What was the specific question that
16 elicited that information, if you recall?

17 A. I don't recall the exact wording but it
18 was something along the lines: Of one hundred
19 smokers, how many of them do you believe will get
20 lung cancer because they smoked?

10:15:32 21 Q. Was any question to a smoker do you
22 believe you will die of or have a risk of dying
23 from lung cancer?

24 A. No. That was not the question.

JONES FRITZ & SHEEHAN

51956 8339

W. Rip Viscusi, Ph.D.

10:15:44 1 Q. Have you used such a question in any of
2 your surveys?

3 A. No.

10:15:58 4 Q. The question asked in this survey and
5 I think in other ones related to lifetime risk of
6 smoking. Correct?

7 A. Your risk of getting lung cancer at some
8 point in your lifetime.

9 Q. Over their lifetime?

10:16:06 10 A. Yes.

11 Q. In other words, it wasn't do you believe
12 you're going to get lung cancer or -- strike that
13 -- you don't believe or do you believe that of a
14 hundred people, how many will get lung cancer
10:16:16 15 within the next year or five years, it was over
16 their lifetime. Correct?

17 A. That's correct.

18 Q. Now, there was no attempt to determine as
19 I understand it, then, what the smokers believed
10:16:32 20 their risks were for either smoking a single
21 cigarette, a pack of cigarettes, a carton of
22 cigarettes or even a month of cigarettes. Correct?

23 A. That's correct.

24 Q. So what as I understand the survey did

JONES FRITZ & SHEEHAN

51956 8340

W. Kip Viscusi, Ph.D.

10:16:48 1 was compare what was the lifetime risk of
2 continuing to smoke cigarettes of these hundred
3 people. Correct?

4 A. I don't understand the question.

10:17:02 5 Q. Well, the question said of a hundred
6 people who smoked --

7 Your question.

8 Q. No, the survey question.

9 A. No, I understand my survey question.

10:17:10 10 I want to understand your question.

11 A. I'm explaining it to you. Of the hundred
12 people who smoked, the person was to assume that
13 the people would continue to smoke over their
14 lifetime. Correct?

10:17:18 15 A. Yeah. You're looking at a smoker, yes.

16 Q. You weren't talking about, well, if you'd
17 continue to smoke for a year, of a hundred how many
18 would contract lung cancer. Correct?

19 A. That is correct.

10:17:30 20 Q. Okay. In other words, the risk that was
21 being assessed was a lifetime risk of smoking?

22 A. That's correct.

23 Q. But the decision to smoke or not to smoke
24 or to continue to smoke is made on what might be

JONES FRITZ & SHEEHAN

51956 8341

W. Kip Viscusi, Ph.D.

10:17:44 1 called an incremental or marginal basis. Correct?
2 In other words, you have to pick up a cigarette and
3 smoke it.

10:17:52 4 A. Taking into account the risk that
5 generates.

6 Q. Right. And what are the risks of smoking
7 a single pack of cigarettes?

8 A. A lot less than your lifetime risk.

9 Q. Infinitesimally less. Correct?

10:18:04 10 A. Infinitesimal is not -- It's bigger than
11 zero

12 Q. You understand the difference between a
13 decision to make a lifetime decision to smoke
14 versus a decision to smoke a pack or carton of
10:18:17 15 cigarettes. Correct?

16 A. I agree they're different.

17 Q. All right. And can you use the word
18 incremental or marginal when you're referring to
19 the decision to smoke a pack of cigarettes? Is
10:18:26 20 that an appropriate term in your area of expertise?

21 A. No, I just call it a decision to smoke a
22 pack of cigarettes. Why don't we just call it
23 that?

24 Q. Well, I'm just asking you if the word

JONES FRITZ & SHEEHAN

51956 8342

W. Kip Viscusi, Ph.D.

10:18:38 1 incremental has meaning to you in this context.

2 A. Incremental has meaning. But it's not a
3 terminology I would use.

10:18:46 4 Q. You wouldn't use the term marginal then,
5 the marginal risk?

6 A. Well, the marginal risk would be if you
7 were to continue as a variable what the slope of
8 your dose-response relationship is. So I'm not
9 sure if that's what you're talking about.

10:19:00 10 Q. Yeah, that's the idea, I think. And, for
11 instance, you've been involved in assessment of
12 warnings on chemical products. Is that correct?

13 A. That's correct.

10:19:14 14 Q. And warnings on chemical products have
15 gone back, my gosh, till even before World War II.
16 Fair enough?

17 A. I'm sure they have.

10:19:26 18 Q. And often the risk in the chemical
19 product could be an immediate risk, that is, you
20 get either inhalation of chemical fumes or
21 absorption of the chemical through the skin or some
22 other exposure that occurs much more proximate
23 temporally to the exposure than cigarettes. Fair
24 enough? At least, that can happen?

JONES FRITZ & SHEEHAN

51956 8343

W. Rip Viscusi, Ph.D.

10:19:42 1 A. Right. There could be acute hazards that
2 affect you right then and there.

3 Q. And are there different considerations in
4 warnings that relate to acute hazards than those
10:19:54 5 which might be more chronic?

6 A. It depends on the character of the
7 precautions you want people to take. So that it's
8 not so much the character of the risk that drives
9 it but what you want the risk information strategy
10:20:12 10 to come in terms of knowledge that affects
11 behavior.

12 Q. Well, when you make an assessment of the
13 risk of a chemical exposure let's say in the
14 workplace, another topic you've discussed in your
10:20:26 15 articles -- Correct?

16 A. I've written about that, yes.

17 Q. When you make that assessment of risk and
18 the worker is making the assessment of risk, one of
19 the things the worker might be concerned about
10:20:42 20 depending upon the label is the acute effects of
21 the exposure to the chemicals. Correct?

22 A. You might be concerned about that, and
23 for asbestos you might be concerned about the long-
24 term effects. For TNT you care about the acute

JONES FRITZ & SHEEHAN

51956 8344

W. Kip Viscusi, Ph.D.

10:20:56 1 effects; you know, it's going to blow up.

2 Q. But yet the decision to use -- Well, how
3 would you describe the risk perception of smoking a
4 carton of cigarettes as opposed to a lifetime of
5 cigarette smoking?

6 A. Well, the risk from a carton is less than
7 the risk over your lifetime.

8 Q. Right. Have you assessed -- I'm sorry.
9 I didn't mean to --

10:21:20 10 A. To the extent that people overestimate
11 small probabilities, then people will tend to
12 overestimate that risk more than the lifetime risk.

13 Q. But the risk of smoking a carton of
14 cigarettes for cancer or lung cancer is very small.

10:21:34 15 Correct?

16 A. It is a small probability. That's why it
17 will tend to be overestimated more.

18 Q. Have you assessed that in any survey?

19 A. No. But I've done work with small
10:21:48 20 probabilities and mortality, including work where
21 I've polled people last summer for a wide range of
22 causes of death. The smaller the risk, the more
23 likely it is that people tend to overestimate
24 that. I have another survey on that.

JONES FRITZ & SHEEHAN

51956 8345

W. Rip Viscusi, Ph.D.

10:22:02 1 Q. The question I asked you was whether
2 you've attempted in the smoking context to assess
3 the risk perception of the respondents as to the
4 risk of smoking for a given quantity of cigarettes
10:22:18 5 less than lifetime.

6 A. I haven't assessed the risk per pack or
7 per carton.

8 Q. In your experience does someone decide,
9 make a decision "I'm going to be a lifetime
10:22:26 10 smoker?"

11 A. I think people decide that they're going
12 to be a smoker. They don't decide that "I'm going
13 to smoke one cigarette." If you're talking about
14 an adult. I mean, a teenager might have one
10:22:40 15 cigarette experimentally, but an adult, typically
16 they're going out to buy cigarettes because they
17 smoke cigarettes.

18 Q. The question was: In your experience in
19 doing all this work, do you have a perception or a
10:22:58 20 belief that people make a decision to smoke for
21 their lifetime as opposed to I've decided I'm going
22 to smoke some cigarettes and I don't have a
23 judgment whether I'm going to smoke for the rest of
24 my life?

JONES FRITZ & SHEEHAN

51956 8346

W. Kip Viscusi, Ph.D.

10:23:14 1 A. I think people when they smoke regularly
2 understand that typically people continue to smoke
3 regularly.

10:23:24 4 Q. But that wasn't my question. My question
5 was: Do you believe people when they decide to
6 smoke make the decision to smoke for a lifetime?
7 I'm deciding I'm going to be a lifetime smoker. Is
8 that your opinion, that that's the decision people
9 reach?

10:23:38 10 A. No. In fact, that's contradicted by
11 behavior. People often aren't lifetime smokers.

12 Q. In fact, you're aware of data which
13 suggests that a high percentage of people, up to 80
14 percent, actually want to quit smoking. Correct?

10:23:50 15 A. I don't know what those statistics mean,
16 but I do know a lot of people already have quit
17 smoking.

18 Q. I'm asking if you are aware of those
19 statistics.

10:23:56 20 A. No, I've seen statistics, but I don't
21 know what the statement about quitting means since
22 the nature of the question I think leads people to
23 give that kind of answer.

24 Q. Where have you seen those statistics?

JONES FRITZ & SHEEHAN

51956 8347

W. Kip Viscusi, Ph.D.

10:24:10 1 A. They're in my book.
2 Q. And who did you cite for those?
3 A. I forget. There are national surveys.
4 Q. And what is the percentage on the
10:24:22 5 national surveys, if you recall? And if you recall
6 the year, I'd appreciate it if it's in your book.
7 A. I don't recall either one, but they're
8 all in my book.
9 Q. And did you rely upon those national
10:24:34 10 statistics in putting them in your book? I mean
11 the accuracy of them.
12 A. I relied on the accuracy, but it doesn't
13 mean I think the questions mean anything.
14 Q. Do you think those questions don't mean
10:24:42 15 anything?
16 A. I think those questions don't accurately
17 characterize people's attitudes. In fact --
18 Q. Don't accurately characterize their
19 attitudes or don't characterize their ability to
10:24:54 20 quit?
21 A. No, it doesn't characterize what they
22 really mean. In fact, that's discussed in the book
23 as well.
24 Q. Well, does the survey in 1985

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:25:04 1 characterize what people really mean if they say
2 that of a hundred people that smoke over their
3 lifetime, X number will get lung cancer?

4 A. I believe it does.

10:25:14 5 Q. And is there a disparity in the
6 literature between the people who state they would
7 like to quit smoking and those who actually do quit
8 smoking?

9 A. Yes.

10:25:24 10 Q. What is the degree of the disparity?

11 A. I don't know the degree. More people say
12 they want to quit than do quit.

10:25:36 13 Q. Is there a high -- Is there a
14 significant difference between the people who say
15 they would want to quit versus the people who quit?

16 A. With a huge sample you don't need a large
17 difference to be statistically significant.

10:25:52 18 Q. Are you familiar with data that shows on
19 surveys that 80 percent of the people in a
20 particular survey who are smokers say they would
21 want to quit, whereas in fact only in a given year
22 3 or 2 or 3 percent actually quit?

23 A. I don't know about those survey results.
24 I've seen surveys, but I don't know about those

JONES FRITZ & SHEEHAN

51956 8349

W. Kip Viscusi, Ph.D.

10:26:04 1 exact numbers.

2 Q. Well, what percentage of people quit
3 smoking a year?

4 A. I don't know.

10:26:12 5 Q. Are you interested in that topic?

6 A. No.

7 Q. Are you interested in --

8 A. A little bit. I mean, it's in my book.

9 But, you know, to know the exact number, there's no
10:26:26 10 true number. In other words, there's no number
11 that it should be.

12 Q. But I'm asking whether you can
13 characterize the difference between the people who
14 in surveys say they want to stop smoking and those
10:26:40 15 that actually do stop smoking as a wide disparity.
16 Is that a fair statement?

17 A. I would want to see the exact survey
18 question. Also have a definition of what you mean
19 by wide disparity. But I know it's larger.

10:26:56 20 Q. I mean, if the difference was between
21 80 percent of the people say they want to stop
22 smoking and only 3 percent actually do, that would
23 be a wide disparity. Fair enough? Or, a large
24 disparity.

JONES FRITZ & SHEEHAN

51956 8350

W. Kip Viscusi, Ph.D.

10:27:06 1 A. Yes, but built on questions that I don't
2 think are valid, which I discuss in the book.

3 Q. Now, going back to the 1985 survey, you
4 didn't ask any questions about addiction, did you?

10:27:18 5 A. I didn't ask any questions at all. But
6 Audits & Surveys didn't ask any question.

7 Q. Now, how many people actually completed
8 the survey questionnaire?

9 A. I'd have to look it up.

10:27:46 10 Q. Well, would the number 1250 ring a bell?

11 A. It's the right ballpark. I don't know
12 if it doesn't ring any bells, but....

13 Q. How many surveys -- Is there any
14 standard in the survey literature that would
10:28:00 15 suggest that if you have too many survey questions
16 that were either rejected or were terminated or
17 refused to answer questions, et cetera, that that
18 would still form a valid study?

19 A. I don't know of any exact standard.

10:28:20 20 Q. What is your -- Do you employ a standard
21 yourself?

22 A. No.

23 Q. Are you aware of the literature on
24 whether in a survey if you attempt to reach or you

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:28:40 1 actually reach let's say a thousand people but of
2 which only a hundred actually complete the survey
3 and nine hundred don't, whether that would
4 constitute a valid survey?

10:28:48 5 A. It depends on the characteristics of the
6 people, so it depends on whether you have a random
7 sample or not. And in our case we can also control
8 for the demographic factors and see whether the
9 sample characteristics matter.

10:29:02 10 Q. And did you understand that a percentage
11 of the people whose surveys were completed were
12 either rejected or not included in the study?

10:29:18 13 A. This includes everybody who was called
14 even if they didn't answer the questions. So, in
15 other words, if I refuse to answer a particular
16 question, we have data on that, so I have data on
17 the number of refusals, don't know.

18 Q. Were there cuts or rejects in the sample?

19 A. What's a cut?

10:29:32 20 Q. You tell me.

21 A. I don't know what a cut is.

22 Q. Let me look at -- Page 21 of the
23 document number 2 that you've referenced in your
24 report as a document you've relied upon has under

W. Kip Viscusi, Ph.D.

10:29:46 1 eligible households, they have -- and I could show
2 this to you -- they have completes, household
3 refusal, respondent refusal, terminates, selected
4 respondent not available, and cuts or rejects. Do
10:29:58 5 you know what the word "cuts or rejects" means in
6 that context?

7 A. Conceivably people who didn't
8 complete the interview, but I don't know.

9 Q. Well, that would be under terminates,
10:30:10 10 wouldn't it be?

11 A. I don't know what "cut" is.

12 Q. Were you concerned that about 10 percent
13 of the people interviewed had cuts or rejects?
14 Actually, somewhat less than that; about 8 percent.

10:30:29 15 A. No, because I didn't know what cuts or
16 rejects were.

17 Q. You didn't happen to ask Audits & Surveys
18 why some people's surveys were considered cuts or
19 rejects?

10:30:34 20 A. I wasn't involved with Audits & Surveys
21 at all.

22 Q. What can a survey organization like
23 Audits & Surveys, do they have any discretion to
24 reject a particular questionnaire that is

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:30:52 1 completed, or should they have any such discretion?

2 A. If it was not coded properly, you know,
3 the respondent didn't, well, the telephone operator
4 didn't code it properly, they would have that
10:31:12 5 discretion. But if somebody gave an answer that
6 you didn't like, they're not going to cut that;
7 they're not going to throw that survey away.

8 Q. They had a system, didn't they, Audits &
9 Surveys, for checking the coding and to make
10:31:24 10 corrections if need be. Right?

11 A. I have no knowledge of what system they
12 had in place for the '85 survey because I had no
13 involvement with the '85 survey.

14 Q. Well, but you've cited it repeatedly.
10:31:34 15 Correct?

16 A. Yes, but this is using the data itself.
17 So I did not -- I was not there when they ran the
18 survey.

19 Q. Well, but you had the right to ask them
10:31:44 20 how they ran the survey. Correct?

21 A. I did not -- Apart from finding out the
22 coding sheets, I didn't have -- I was not set up in
23 a manner where I discussed anything with the people
24 at Audits & Surveys.

JONES FRITZ & SHEEHAN

51956 8354

W. Kip Viscusi, Ph.D.

10:32:00 1 Q. Well, you read the report, did you not?

2 A. Yes. Yes.

3 Q. And did you notice that there was 108
4 rejects or cuts? Did you happen to notice that,
10:32:10 5 Dr. Viscusi?

6 A. I don't recall what I noticed. It was
7 over a decade ago that I read it, so.... Haven't
8 read it since.

9 Q. Are you aware of any memorandum or
10:32:36 10 documents or reports that Jones Day or any of the
11 lawyers working on the survey generated regarding
12 this 1985 survey?

13 A. No.

14 Q. Have you seen any such documents?

10:32:40 15 A. Not to the best of my knowledge.

16 Q. Have you been present at any meetings
17 where this particular survey was discussed?

18 A. Yes, when I discussed my analysis of it.

19 Q. Did you discuss how the survey was
10:33:00 20 conducted with the lawyers for Jones Day?

21 A. Just briefly. You know, it was a random
22 digit dial survey.

23 Q. Now, the survey question asked about
24 lifetime risk of lung cancer but did not ask

JONES FRITZ & SHEEHAN

51956 8355

W. Kip Viscusi, Ph.D.

10:33:26 1 lifetime risk of death from lung cancer. Correct?

2 A. That's correct.

3 Q. Is that a weakness of the question?

4 Would you have preferred to have a question asking
10:33:32 5 death from lung cancer as opposed to contracting
6 lung cancer?

7 A. It's not a weakness, it's just a
8 different question.

9 Q. Well, is that a limitation of the survey
10:33:48 10 that they didn't ask that question, death from lung
11 cancer?

12 A. I don't view it as a limitation. But to
13 the extent that you want to know about death from
14 lung cancer as opposed to just contracting lung
10:34:04 15 cancer, it's something that I changed the wording
16 to test whether that made a difference.

17 Q. Well, certainly the wording that only
18 asks for incidence of lung cancer as opposed to
19 lung cancer would not be ideal in that survey.

10:34:38 20 Correct?

21 A. It's different. It doesn't tell you how
22 many people also think they will die. But I've
23 also shown with my studies people don't like
24 cancer, period, so it's a very severe outcome even

JONES FRITZ & SHEEHAN

51956 8356

W. Kip Viscusi, Ph.D.

10:34:48 1 if you don't die.

2 MR. WITHEY: Read the question back
3 again, please.

4 (The reporter read the question.)

10:35:08 5 BY MR. WITHEY:

6 Q. As opposed to death from lung cancer is
7 what I meant. That wouldn't be an ideal way of
8 framing the question. Correct?

9 A. I still like my answer.

10:35:18 10 Could you read back my answer that
11 I have to his question?

12 Q. Why don't I read you from your article
13 and see if you agree with what you wrote in the
14 literature. Can we do that?

10:35:24 15 A. Sure.

16 Q. "Although lung cancer represents an
17 important risk of smoking, the wording of the risk
18 perception question is not ideal." This is again
19 referring to the 1985 survey. Do you agree with
20 that?

10:35:34 21 A. I actually think it's fine. It doesn't
22 include all risks.

23 Q. I'm reading from The Review of Economics
24 and Statistics, November '91, Age Variation In Risk

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:35:50 1 Perceptions And Smoking Decisions, at page 579.
2 That's the article you wrote, it's in your -- It's
3 in your list of reliance documents. Correct?

4 A. That's correct.

10:36:00 5 Q. You stand by what you said here or not?
6 Do you want to change it?

7 A. I'm not changing it. But I would like to
8 finish my answer as well.

9 Q. Go right ahead.

10:36:10 10 A. To say that it is not ideal doesn't mean
11 that it doesn't pick up something fine in its own
12 right. It just doesn't pick up every risk
13 associated with smoking. So I've asked other
14 questions to address those risks as well. There's
10:36:21 15 no one question that picks up everything.

16 Q. Would you agree that another important
17 omission in this survey was not asking risks from
18 all risks of death from all causes of smoking?

19 A. I would characterize these things as
10:36:36 20 other interesting things we would like to know
21 about risk perceptions, which is why I added it in
22 1991.

23 Q. Have you published in the peer-reviewed
24 literature an assessment that the failure to ask a

JONES FRITZ & SHEEHAN

51956 8358

W. Kip Viscusi, Ph.D.

10:36:56 1 question in the 1985 survey about all death-related
2 smoking risk was an omission?

3 A. I'm not sure I'd characterize it it was
4 an omission. It's not like somebody thought of it
10:37:10 5 and forgot about it.

6 Q. Let me go ahead and read you from the
7 same article I just quoted and see if you stand by
8 this or would like to change it, Dr. Viscusi.
9 "A potentially more important omission is that
10:37:20 10 adverse health effects other than lung cancer were
11 not included in the survey." Do you stand by that
12 statement?

13 A. Well, it didn't address those, but it is
14 not an omission in the sense that somebody forgot
10:37:30 15 about it.

16 Q. I think the question is do you stand by
17 the survey? I mean -- excuse me -- do you stand
18 by the statement I just read you?

19 MR. ATKESON: And he just answered
10:37:38 20 it.

21 MR. WITHEY: I don't think so.
22 I would like an answer.

23 MR. ATKESON: He did.

24 A. I like my old answer.

JONES FRITZ & SHEEHAN

51956 8359

W. Kip Viscusi, Ph.D.

10:37:44 1 Q. Well, do you believe it is correct to
2 characterize this -- Strike that. Do you believe
3 this following statement is a true and accurate
4 statement of your judgment of the 1985 survey
10:38:00 5 question, quote, "A potentially more important
6 omission," that is, more important than it was
7 not ideal because it didn't ask about death from
8 lung cancer rather than merely incidence of it,
9 "A potentially more important omission is that
10:38:10 10 adverse health effects other than lung cancer were
11 not included in the survey."

12 A. If you want to address all risks
13 comprehensively then you would want more things in
14 the survey than just lung cancers.

10:38:22 15 Q. And it was an omission not to ask that at
16 the time. Correct?

17 A. I don't think that they forgot about it.
18 The survey was designed to only get at lung cancer
19 because that was the nature of the case for which
10:38:32 20 it was designed.

21 Q. So it wasn't an omission then?

22 A. No, because it was a lung cancer
23 litigation for which they ran the survey.

24 Q. Now, you understand that the questioners

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:39:02 1 in the 1985 survey, if the respondent seems not
2 able to answer the question about out of a hundred
3 smokers, lifetime smokers, how many will get lung
4 cancer, were probed, were asked a follow-up
10:39:16 5 question?

6 A. "Well, give us your best guess; just your
7 best estimate will do," something like that.

8 Q. Have you employed that technique in any
9 survey that you've designed?

10:39:24 10 A. Yes.

11 B. And is there a standard that allows you
12 in conducting surveys to tell people it's okay to
13 guess?

14 A. If people don't know the exact answer you
10:39:40 15 can tell them "Just your best estimate will do."
16 Typically you have, you know, a standard probe that
17 you use.

18 Q. And you've employed that probe, "It's
19 okay to guess or give us your best guess"? You
10:39:52 20 yourself have employed that. Is that correct?

21 A. More like "Your best estimate will do" as
22 opposed to the more colloquial "It's okay to
23 guess."

24 Q. Why is "your best estimate" better than

JONES FRITZ & SHEEHAN

51956 8361

W. Kip Viscusi, Ph.D.

10:40:04 1 using the word "guess"?

2 A. You can say whatever you want, but this
3 is just what I've written in terms of past surveys.

10:40:16 4 Q. I'm asking you why it's more appropriate
5 to use the word "best estimate" than the word
6 "guess."

7 A. Either way is I think fine, depending on
8 whether people understand it. I don't think it's a
9 major difference.

10:40:28 10 MR. WITHEY: Could you go back and
11 read his answer when he distinguished between best
12 estimate and guess? Maybe I misunderstood what you
13 said.

14 (The reporter read back the record as
15 requested.)

16 BY MR. WITHEY:

17 Q. Was the word "guess" employed within the
18 probe in the 1985 survey?

19 A. I have to look at the survey.

10:41:10 20 Q. But you would not have any concern about
21 the use of the word "guess" then in that survey.
22 Correct?

23 A. No, because you're trying to elicit an
24 answer where people may not know in some sense the

JONES FRITZ & SHEEHAN

51956 8362

W. Kip Viscusi, Ph.D.

10:41:24 1 exact number. It's not a fact that they know; they
2 have to provide their own subjective assessment.

10:41:34 3 Q. What triggers whether to use the probe?
4 What triggered in the '85 survey whether to use the
5 probe?

6 A. If people don't give you a numerical
7 answer to the first question.

10:41:44 8 Q. What if people say, you know, "I just
9 really have no idea"? Would they have been told,
10 "Well, that's okay, you can just use your best
11 guess." Would that be appropriate?

12 A. Well, I think that would. And if they
13 still said "I can't give you an answer," then it is
14 recorded as a don't know.

10:41:54 15 Q. So it would be okay for the questioner in
16 this survey if someone said, "You know, I have no
17 idea," to say "Okay, give us your best guess."
18 That would be okay?

10:42:10 19 A. Well, when people say "I have no idea,"
20 you know, it's like you asking me, you know, how
21 many dollars do I have in my wallet right now, and
22 I would say "I have no idea." But if you said do
23 I have over a thousand dollars, I'd say "No,
24 I certainly don't." So they don't know the exact

JONES FRITZ & SHEEHAN

51956 8363

W. Kip Viscusi, Ph.D.

10:42:24 1 answer. And when people say "I have no idea," they
2 often don't mean I have no idea; it means that they
3 don't know the exact answer.

10:42:36 4 Q. But then, I take it, it was left in the
5 discretion of the individual questioners whether to
6 probe and based on what response the probe would be
7 appropriate. Correct?

10:43:00 8 A. My expectation is that there would always
9 be at least one probe. At least, that's the way
10 I've always run surveys.

11 Q. Now, in your book when you talked about
12 the summary of teenager risk perception
13 interactions based upon the survey, you had the
14 ages of 16 to 21. Correct?

10:43:30 15 A. If that's what it says, that's what the
16 ages are.

17 Q. In your book, by the way, did you
18 identify this survey as having been done on behalf
19 of the tobacco industry's lawyers?

10:43:46 20 A. Yes.

21 Q. Have you done that for every time you've
22 cited a survey in any published literature?

23 A. I don't recall every time.

24 Q. Would it be appropriate to do so?

JONES FRITZ & SHEEHAN

51956 8364

W. Kip Viscusi, Ph.D.

10:44:00 1 A. I think these survey questions stand for
2 themselves. In fact, I don't even think it's
3 required here. I don't care who funded the survey;
4 if I'm including the text of the survey as an
10:44:08 5 appendix, then the readers can make their own
6 judgment.

7 Q. I think the question was, would it be
8 appropriate?

9 A. No, I don't think it's necessarily
10:44:16 10 appropriate. But I've erred on the side of
11 overdisclosure.

12 Q. But did you always err on the side of
13 overdisclosure?

14 A. I think people are so familiar with me
10:44:2 15 using these data that I've stopped always
16 indicating that, you know, Audits & Surveys is run
17 by this group.

18 Q. So the reason you might not have used it
19 in some publication is because everybody knows your
10:44:36 20 work and knew it was done by the tobacco industry.
21 Is that correct?

22 A. All of the early work was with
23 acknowledgment and everybody knows where the Audits
24 & Surveys data come from who works in the field

JONES FRITZ & SHEEHAN

51956 8365

W. Kip Viscusi, Ph.D.

10:44:48 1 because this is why they cite it.

2 Q. Was the Audits & Surveys study done in
3 1997 funded by the tobacco industry as well?

4 A. Yes.

10:44:58 5 Q. And you've cited that study, those
6 studies again frequently in, well, at least your
7 work since '97. Correct?

8 A. I've only cited it in one published
9 paper.

10:45:08 10 Q. And you indicated it was funded by the
11 tobacco industry in there?

12 A. I don't know if I did. I know there's
13 discussion of all the surveys. It may have come
14 up.

10:45:30 15 Q. Do you have any actual survey evidence
16 that would indicate that people in these surveys
17 overestimated the risk of smoking any quantity of
18 cigarettes less than lifetime, any empirical data?

19 A. No. The questions all deal with
10:45:54 20 cigarette smokers.

21 THE WITNESS: What time is break
22 time, by the way?

23 MR. WITHEY: You want to take a
24 break?

JONES FRITZ & SHEEHAN

51956 8366

W. Kip Viscusi, Ph.D.

10:46:00 1 THE WITNESS: I don't have a watch so
2 I don't know how long we've been going.
3 MR. WITHEY: It's quarter of 11:00.
4 THE WITNESS: Why don't we take a
10:46:04 5 break now. Then we can break for lunch.
6 MR. WITHEY: Let's take a break.
7 THE VIDEOGRAPHER: Going off the
8 record. The time is 10:45.
9 (Short recess taken.)
10:51:26 10 THE VIDEOGRAPHER: Back on the
11 record. Time is 10:51.
12 BY MR. WITHEY:
13 Q. It is true, is it not, that in this
14 survey and in fact in the 1997 Audits & Surveys
10:51:40 15 survey that the probe "Just your best guess will
16 do" or "Give us your best estimate" could be
17 triggered by an answer "I don't know"?
18 A. Yes.
19 Q. How much work does Audits & Surveys do
10:52:04 20 or -- Strike that. Are you familiar with how much
21 work Audits & Surveys did on behalf of the tobacco
22 industry?
23 A. No.
24 Q. Are you interested in that?

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:52:10 1 A. No.

2 Q. Now, when you look at the data from the
3 results from the 1985 survey, do you notice that
4 there's any variations in the estimates of persons
10:52:44 5 that would get lung cancer as you go from let's say
6 zero to 5 percent or zero to five out of a hundred
7 up to sixty?

8 A. Different people give different answers.
9 But I don't understand your question.

10:53:02 10 Q. Well, for instance, if you recall, what
11 percentage of people said that the numbers would be
12 50 to 59 versus 40 to 49?

13 A. I don't recall the exact numbers.
14 They're all in the book.

10:53:28 15 Q. Let me ask if you would -- Well, would
16 you expect that there would be some correlation
17 between people who think 40 to 49 people would
18 contract lung cancer versus those that would think
19 it was 50 to 59? Do you think those numbers would
10:53:50 20 likely be close to one another as opposed to vary
21 significantly?

22 A. No, I think they would vary because --
23 I know they vary. So if you think the answer is
24 49, 50 is the more salient number. If you think

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:54:12 1 the answer is 51, 50 is the more salient number.

10:54:24 2 Q. Have you examined those numbers recently
3 to determine whether you can explain why very few
4 people thought it was in the 30 to 39 or 40 to 49
5 compared to the 50?

6 A. I'm not sure it's very few. In fact, the
7 50 to 49 is not all 50's; there's a substantial
8 part of non-50's in that group.

10:55:06 9 Q. Now, your 1997 -- Strike that. Was it
10 Audits & Surveys again that did the survey in 1997?

11 A. Yes.

12 Q. Now, what does Bruskin Goldring Research
13 have to do with this survey?

10:55:26 14 A. I think these are the people that make
15 the calls. So they retained actually this group of
16 people to actually make the phone call, so they're
17 random digit dialers.

10:55:40 18 Q. Let me just ask you a question. If you
19 assume that -- Well, strike that. In 1997 you did
20 have something to do with the survey instrument.
21 Correct?

22 A. No. I had the questions that were given
23 to them to incorporate in the survey, but I did not
24 work with them on the survey.

W. Kip Viscusi, Ph.D.

10:55:52 1 Q. Did you ask that the same age groups be
2 utilized in the 1997 as in the 1985 survey?

3 A. I never had any contact whatsoever with
4 Audits & Surveys, so I didn't ask them anything.

10:56:06 5 Q. Well, I thought you said the questions
6 posed you'd had contribution to. Correct?

7 A. No. My questions from the 1991 survey
8 were given to Audits & Surveys to incorporate in a
9 revised survey.

10:56:16 10 Q. Who gave them?

11 A. Mr. Atkeson.

12 Q. On whose behalf?

13 A. On behalf of the tobacco industry whom he
14 represents, I would assume.

10:56:26 15 Q. Did he have conversations with you about
16 that survey before it occurred?

17 A. No.

18 Q. Did he tell you it was happening?

19 A. No.

10:56:34 20 Q. Did he tell you he was using your
21 questions from the '91 survey?

22 A. I'm not sure about all these things.
23 I think the answer is no to all these things. It
24 may have come up, but.... There was nothing where

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W. Rip Viscusi, Ph.D.

10:56:54 1 I was directly involved, so whatever it was, he had
2 started the process or made the calls at least to
3 the survey firm before I was contacted. I'm not
4 sure at what point I was contacted.

10:57:04 5 Q. But you were contacted?

6 A. I did discuss with him that there was a
7 survey before I had the results of the survey, but
8 I'm not sure at what point this happened, whether
9 he called them first. I would assume he might have
10:57:18 10 called them to ask can we run another survey.

11 Q. Well, I'm not asking for what you're
12 assuming. I'm asking for your best recollection.
13 And I guess the question is: As you sit here today
14 do you recall that you knew something about there
10:57:30 15 might be another survey before the survey was
16 conducted?

17 A. I don't know the exact timing, but I know
18 I was not involved in the survey design.

19 Q. I didn't ask you that. I just asked you
10:57:44 20 if you believe you knew the survey was conducted --
21 strike that -- if you had some idea from
22 Mr. Atkeson or somebody else that there was going
23 to be another survey before the actual survey was
24 conducted.

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W. Kip Viscusi, Ph.D.

10:57:54

1

A. I'm not exactly sure of the timing of when I found out.

2

3

Q. It could have been that way, though?

4

A. It could have been that way.

10:58:00

5

Q. And there was a time when you understood that the 1991 questions that you asked to the two hundred people down in North Carolina were going to be used or had been used in this survey. Correct?

9

A. That's correct.

10:58:14

10

Q. Either were going to be or had been used.

11

A. That's correct.

12

Q. Would it have been preferable to use the same categories in the 1997 survey as were used in the 1985 survey?

14

10:58:20

15

A. Well, the problem is that they changed the legal age for smoking in these states from 1985 to 1997, so that whereas 16 was fine for smoking pretty much across the board in 1985 in terms of the legal status, it was no longer acceptable in 1997, so you'd want to change the age categories to reflect that.

10:58:46

20

21

22

Q. Why?

23

A. At least when I've always run surveys you always get in trouble with human subject reviews

24

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W. Kip Viscusi, Ph.D.

10:58:58 1 when you ask people about illegal behavior. So
2 I didn't want -- I mean, I would think it gets to
3 be much touchier to start including people below
4 the legal age of smoking in your survey. You know,
10:59:10 5 it just becomes much more sensitive.

6 Q. Did you understand that it was illegal to
7 sell cigarettes to minors before 1985 in numerous
8 states?

9 A. Some states. But the great majority of
10:59:18 10 the states it was not illegal.

11 Q. Really?

12 A. Yes.

13 Q. Do you understand that the Surgeon
14 General surveyed this in 1989?

10:59:26 15 A. At age 16? I know lots of states you
16 could buy cigarettes legally.

17 Q. I think the question was did you
18 understand that the Surgeon General surveyed this
19 topic in his 1989 report?

10:59:40 20 A. 1989 is after 1985. Did he do a 1985
21 survey? I don't think he did.

22 Q. The question was: Did the Surgeon
23 General survey which states had laws prohibiting
24 the sale of cigarettes to minors in his 1989

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

10:59:50 1 Surgeon General's report?

2 A. I don't know if he had one pertaining to
3 '85. That's all I care about.

10:59:59 4 Q. Okay. Did you read the 1989 Surgeon
5 General's report, sir?

6 A. I have read most of it, not as part of
7 this case, but a decade ago I tried to read most of
8 it.

1:00:12 9 Q. Did you understand it was illegal to
10 smoke cigarettes in any year?

11 A. No. Cigarette purchases you can't make.
12 They're not going to arrest you for smoking a
13 cigarette.

1:00:24 14 Q. Right. And you weren't asking if you'd
15 bought cigarettes or not, you were asking whether
16 they were smokers or non-smokers. Correct?

17 A. That's correct. But it's still close
18 enough that I think that would be a sensitive issue
19 that I'm sure any university human-subjects
11:00:36 20 committee would treat much more sensitively than,
21 you know, asking people about something that
22 involved nothing illegal.

23 Q. How many states were surveyed in 1985?

24 A. I don't think we know the number of

W. Kip Viscusi, Ph.D.

11:00:48 1 states. I think we know areas of the country,
2 census regions. So it's a random digit dial, so
3 I can't guarantee there's somebody from Alaska.

11:00:58 4 Q. And were there any states that people
5 were asked questions -- Strike that. Were there
6 any respondents in states in which it was illegal
7 to purchase cigarettes in 1985?

11:01:12 8 A. I don't know. But you're designing a
9 survey instrument that is going to be broadly
10 applicable to the extent that you can target the
11 entire country, so you want the country's norm to
12 be reflected in the questions.

13 Q. So the answer is, well, in fact there
14 could have been people who were responding that
15 were underage and in states in which it was illegal
16 to purchase cigarettes. Correct?

17 A. There could be.

18 Q. But you talked something about in
19 research subjects you don't want to do that.
20 Correct?

21 A. Well, you're designing a national survey
22 and the national norm then was not that it was
23 illegal to purchase cigarettes at the age of 16, so
24 you'd want to go with the national norm.

JONES FRITZ & SHEEHAN

51956 8375

W. Kip Viscusi, Ph.D.

1:01:46 1 Q. But the norm isn't based on a national
2 law, it's based on state-by-state law. Correct?

3 A. That's correct.

4 Q. Would you be surprised to find out in
1:02:34 5 1985 forty-two states had states with laws
6 restricting smoking?

7 A. At what age?

8 Q. 18. Would that surprise you?

9 A. I don't know the exact number. I'm not
1:02:48 10 sure anything would surprise me.

11 Q. Would there be some bias or some
12 potential inaccuracy in the survey results if the
13 person being asked the question believed it might
14 be illegal to purchase cigarettes and therefore
1:03:12 15 might not answer the question totally accurately?
16 Again, if you're underage. Assumes a person knows
17 there's a law against it, I suppose, but....

18 A. Well, no one's age is given away. You
19 only have to ask an age category, so it's 16 to 21.

1:03:26 20 Q. So that would take care of it then?

21 A. I would think there's no reason the
22 person would think that their responses would come
23 back to haunt them.

24 Q. At any rate, in the 1997 survey there was

W. Kip Viscusi, Ph.D.

11:03:48 1 no category for anyone under the age of 18.

2 Correct?

3 A. That's correct.

11:04:02 4 Q. Have you ever done any survey on the risk
5 perceptions of people related to smoking that are
6 under the age of 16?

7 A. I haven't run my own surveys, but the CPS
8 data does refer to people that are younger than 18.

9 Q. And that was done in 1993?

11:04:14 10 A. That's correct.

11 Q. And the laws generally across the country
12 had changed by then to make it illegal for underage
13 smokers then?

14 A. Right.

11:04:26 15 Q. But that survey instrument asked the
16 question nevertheless?

17 A. Sure, it did.

18 Q. So, in other words, the 1997 survey could
19 have done it as well, asked people under the age 18
11:04:36 20 these questions?

21 A. Well, the '93 survey was a government
22 survey and the '97 survey was a private survey.

23 Q. So it's okay if the government does it
24 but not if a private agency does it?

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W. Kip Viscusi, Ph.D.

1:04:48 1 A. Typically government surveys undergo a
2 human-subjects review to make sure that all of the
3 questions they're asking don't violate any ethical
4 standard.

1:05:00 5 Q. Other than the question regarding smoking
6 status, there's no other question in any of the
7 surveys from either '85, '91 or '97 that would in
8 any way incriminate someone. Fair enough?
9 Potentially incriminate someone.

1:05:14 10 A. That's correct.

11 Q. Now, did the 1985 survey report its data
12 with and without the probe?

13 A. I don't recall.

14 Q. You did in 1997? Excuse me. Audits &
1:05:40 15 Surveys did in 1997, as reflected in your book.
16 Correct? Report with and without probe.

17 A. They did. I'm not -- My book was
18 published before that, though. My book doesn't
19 include the '97 survey.

1:05:58 20 Q. Oh, you're right, sorry. I'm referring
21 to the Audits & Surveys document that you've marked
22 or that is included within your list of documents,
23 February 1997, Attitudes Toward Cigarette Smoking.
24 Did you have this marked as one of your reliance

W. Kip Viscusi, Ph.D.

1:06:18 1 documents?

2 A. It should be on the list somewhere.

3 MR. ATKESON: If you look down the
4 authors' list, it's in surveys.

11:06:42 5 MR. WITHEY: That's what I'm looking
6 for. Actually, I don't see it on here.

7 MR. ATKESON: Let me see.

8 MR. WITHEY: Well, I'd ask the
9 witness to identify it, counsel. Thank you.

1:07:16 10 MR. ATKESON: Okay.

11 A. Survey Attitudes Toward Smoking, 1997
12 Audit & Surveys report.

13 Q. Who's the author on there?

14 A. Survey Attitudes Toward Smoking, this
1:07:30 15 thing right here (indicating).

16 Q. Let me see. Okay, thank you.

17 So the authors were in fact Audits &
18 Surveys Worldwide, prepared for Arnold & Porter and
19 Jones Day. Correct?

1:07:44 20 A. That's correct.

21 Q. In that work -- I assume you're familiar
22 with it -- it describes the answers to the
23 questions both with the probe and without the
24 probe. Correct?

JONES FRITZ & SHEEHAN

51956 8379

W. Kip Viscusi, Ph.D.

1:07:52 1 A. I've seen those answers. I've done them
2 myself.

3 Q. But the 1985 survey by Audits & Surveys
4 as I understand it did not do that. Is that
5 correct?

6 A. As far as I know -- I mean, I just don't
7 recall.

8 Q. Is it important to have the answer with
9 or without the probe?

1:08:22 10 A. I pool them both anyway when I do the
11 analysis.

12 Q. Well, if it's not presented you can't do
13 it. Correct? If the data with and without the
14 probe isn't presented, then you can't do an
1:08:34 15 analysis of how many people got prompted by the
16 "It's okay to guess." Correct?

17 A. Well, I did the -- I don't break them
18 out anyway when I use the '97, so I used the data
19 from '97 the same way I used the data for '85.

1:08:48 20 Q. The question was: Do you recall if the
21 1985 data broke out the datasets using with or
22 without probe? And I think you answered you don't
23 recall. Correct?

24 A. That's correct.

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

11:08:58

1

Q. But you know the '97 one did. Correct?

2

A. That's correct.

3

Q. And I asked you, is it important to know with or without probe as presented in the 1997 survey?

11:09:06

5

6

A. That's why I answered for my purposes, no, because even with '97 I pooled the probed and the unprobed responses.

7

8

9

11:09:28

10

Q. Now, let me talk a little bit about this 1991 survey. This was a survey you did in North Carolina?

11

12

A. Well, a survey I designed and ran.

13

14

Q. Who actually did the phone calls?

A. A graduate student in economics.

11:09:36

15

16

Q. One person?

17

A. I believe so. Maybe two, but probably one.

18

19

Q. Did you get funding for that?

A. No.

11:09:46

20

21

Q. How much did it cost?

A. Whatever his time was, so.... I don't recall, but it was not that expensive.

22

23

Q. And the survey instrument, is that contained in your designations?

24

W. Kip Viscusi, Ph.D.

11:10:02 1

A. It's in my book.

2

Q. Is it contained -- It is in your book, the survey design, the questionnaire?

3

4

A. My book should be listed as among the designations.

11:10:10 5

6

Q. Yes, it is. I have Appendix A, Text of Survey Instrument Used in Audits & Surveys Study. Maybe I just -- Was it put in one of the appendices?

7

8

9

11:10:28 10

11

A. No. In the text I discuss the survey questions.

12

13

14

Q. Well, no, I'm asking the questionnaire itself. I mean the actual questionnaire that this person used in 1991.

11:10:38 15

16

17

A. No, I didn't put it in the book.

Q. That's what I was asking.

A. That's correct.

18

19

Q. Are there any documents for the actual questionnaire that was designed?

11:10:48 20

21

A. There were documents, yes. There was a written text of the survey.

22

23

24

Q. Where are those?

A. I don't think I have them anymore.

Q. Was there a document describing the

W. Kip Viscusi, Ph.D.

11:10:58 1 methodology, the design, the structure of the
2 survey in addition to the questions?

3 A. No. I'd just be writing a document to
4 myself. I mean, I saw no reason to write a report
11:11:08 5 to myself on the survey.

6 Q. Well, usually when you do a survey
7 generally, and particularly if you're going to refer
8 to it in the published literature, don't you
9 usually want to keep some record of what the design
11:11:24 10 was and how the questioners were instructed and the
11 methodology utilized? Isn't that standard
12 practice?

13 A. Well, I maintained all of the coding
14 sheets for every response until I moved from Duke
11:11:38 15 to Harvard Law School, so I kept them until, you
16 know, 1995. So I kept them for, you know, a fairly
17 long period of time after I ran the survey, after
18 the book was published. No questions came up.

19 Q. I think the question was: Isn't it
11:11:56 20 standard practice particularly where you're going
21 to refer to a survey in published literature to
22 retain the methodology, design of the survey that
23 was used?

24 A. I have the methodology in my head.

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W. Kip Viscusi, Ph.D.

11:12:06 1 I know the methodology.

2 Q. That's not my question. My question was:
3 Is it standard practice to retain the methodology,
4 the survey design, the instrument, the
11:12:29 5 questionnaire? Is it standard practice to do that?

6 A. I have the survey -- All the details of
7 the survey that I felt I wanted to retain are in
8 the book. So that is my methodology report.

9 Q. I'm just asking you, sir, is it standard
11:12:36 10 practice -- You understand the term standard
11 practice?

12 A. Right. And I've complied with --

13 Q. I'm not asking you why you did something
14 or why you didn't or what you kept. I'm asking
11:12:46 15 you: Is it standard practice when you conduct a
16 survey to retain the instruments, the documents,
17 the survey questionnaire, the methodology? Is it
18 standard practice?

19 A. It all depends. I mean, you don't keep
11:12:56 20 everything forever.

21 Q. So you're saying that for a survey that
22 you're going to refer to in the published
23 literature it is not necessarily standard practice
24 to keep the survey design and methodology in

W. Kip Viscusi, Ph.D.

11:13:12 1 written form. Is that correct?

2 A. Not when it's in my head and I can answer
3 any question about it.

4 Q. How many questions were asked?

11:13:30 5 A. It was a very short survey; I don't
6 recall the number of questions. But it was an
7 abbreviated version of the Audits & Surveys survey.

8 MR. WITHEY: Could you read his last
9 answer back, before this one?

11:14:30 10 (The reporter read back the record as
11 requested.)

12 BY MR. WITHEY:

13 Q. You can answer any question about it,
14 Dr. Viscusi?

11:14:36 15 A. Well, any important question about it.

16 Q. So the number of questions isn't
17 important. Is that correct?

18 A. Because it was shorter than the Audits &
19 Surveys survey, so it was not a long survey that
20 would wear people out.

21 Q. So the number of questions is not
22 important. Is that correct?

23 A. Yeah, whether it was six or seven,
24 I don't -- doesn't matter to me. I never memorize

JONES FRITZ & SHEEHAN

51956 8385

W. Kip Viscusi, Ph.D.

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1:14:54 1 counts of questions to my surveys.

2 Q. How did this individual record the
3 answers?

4 A. We had a written coding sheet.

1:15:08 5 Q. And were the written coding sheets
6 retained?

7 A. They were. Some of them -- Some of them
8 were lost in the move. Some of them were shipped
9 to me in Minnesota where I was getting ready to
10 testify and they were either handed over or got
11 lost in transit because I don't seem to have them
12 now. So we had some of them as of then.

13 Q. In what way were the results then kept,
14 retained?

1:15:50 15 A. Well, they were all handwritten on the
16 sheets plus they were all put in the computer
17 file.

18 Q. And where is the computer file?

19 A. Well, I used to have the computer file.
20 I don't know if I still do.

21 Q. Do you mind looking for it to see if you
22 can find the computer file?

23 A. I can look, but....

24 Q. If you find the computer file related to

W. Kip Viscusi, Ph.D.

11:16:12 1 the 1991 survey, we'll ask that you provide it to
2 Mr. Atkeson and that that be marked as Exhibit 6 to
3 this deposition without objection.

11:16:30 4 When was the last time you saw the
5 computer file, the disk or screen version of it?

6 A. 1991, 1992. May have had a disk handed
7 over to me that I tossed in a drawer, but then
8 I moved, so....

11:16:42 9 Q. You understand that we had asked you to
10 provide all materials and documents, including
11 disks, that you relied upon in formulating any of
12 your opinions or referring to any of the data in
13 your report. Correct?

14 A. Yes. And --

11:16:52 15 MR. ATKESON: And anything he has we
16 have counsel.

17 A. We did a search for --

18 MR. WITHEY: Do you have his disk?

19 MR. ATKESON: We don't have it. He
20 doesn't have it.

21 A. We did a search for --

22 Q. Where is it?

23 A. I assume it got lost in the move. We did
24 a search for the computer file with respect to the

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W. Kip Viscusi, Ph.D.

1:17:06 1 Minnesota litigation where I looked through all the
2 files I had, my research assistant looked through
3 his files, and we were unable to locate it.

11:17:16 4 Q. Were you ever told why you weren't called
5 as a witness in Minnesota?

6 A. I assume it had to do with designations
7 of documents or something. But they just let me go
8 home, so I did never testify.

1:17:36 9 Q. I asked not what you assume but what you
10 were told.

11 A. Nobody gave me an explicit answer.

12 Q. Did anybody give you a general answer,
13 Sir?

1:17:50 14 A. Nobody told me. I had some guesses as to
15 why I might have been not called, but nobody said
16 we're not going to call you because of this reason.

17 Q. What were your guesses?

18 MR. ATKESON: Don't guess.

19 BY MR. WITHEY:

1:17:56 20 Q. You can answer.

21 A. I'd rather not guess since I was never
22 explicitly told. I was never told.

23 Q. Were you told anything about we're not
24 going to use you, the judge made rulings, we don't

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HUMPHREY

W. Kip Viscusi, Ph.D.

11:18:12 1 have time for your testimony? Were you told any
2 general notions about why you weren't called in
3 Minnesota?

4 A. No.

11:18:18 5 Q. Did you have any discussion with
6 Mr. Atkeson about why you weren't called or what
7 the reason was your testimony was not offered to
8 the jury?

9 A. He wasn't there.

11:18:30 10 Q. Well, was there any -- Who was the
11 lawyer that was going to put you on?

12 A. Murray Garnick.

13 Q. Did you have any discussion with
14 Mr. Garnick about your testimony and why you
15 weren't put on the stand?

11:18:42 16 A. We had lots of discussions but we
17 never It was essentially "You can go home."
18 That's basically what I was told.

19 Q. Were you in Minnesota?

11:18:52 20 A. Yes, I was.

21 Q. Were you scheduled to testify on a
22 particular day and told to come a day or two early,
23 something like that?

24 A. Yes.

JONES FRITZ & SHEEHAN

51956 8389

W. Kip Viscusi, Ph.D.

51956 8390

1:19:02 1 Q. So you actually went up there and met
2 with Mr. Garnick?

3 A. Yes.

4 Q. You discussed your testimony, went
1:19:08 5 through the outline or the questions and answers?

6 A. Yes.

7 Q. How many days were you there?

8 A. Two days, I think. Two days before
9 I would've testified.

1:19:22 10 Q. Okay. So you sat, you worked or whatever
11 you did for two days, and you were about to go on
12 the witness stand. Is that correct?

13 A. That's correct.

14 Q. And then you were told "Go home"?

1:19:32 15 A. Well, we were still preparing, so --

16 Q. But eventually you were told "Go home"?

17 A. That's correct.

18 Q. And you weren't given any reason?

1:19:42 19 A. Right. Because all these consultations
20 about why or whether they'd put me on took place
21 without me in the room.

22 Q. So you weren't given a reason. Correct?

23 A. That's correct.

24 Q. And you didn't ask. Correct?

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in HUMPHREY

W. Kip Viscusi, Ph.D.

1:19:52 1 A. No. We had a lot of things going on
2 during the day and, you know, I -- I assumed, you
3 know, that that had something -- you know, all
4 these things may have contributed to it.

11:20:02 5 Q. I asked you, did you ask?

6 A. No.

7 Q. You never asked anybody, you were just
8 told to go home. You never asked anybody, "Well,
9 how come I'm not going to get on the stand?" You
10 never asked them. Is that correct?

11:20:10 10 A. Well, there are lots of reasons why
11 I might have, you know, gone home. So, you know,
12 in terms of the preparation....

13 Q. I just asked you if you asked; I didn't
14 ask you about reasons. I said did you ask, "Well,
15 okay, I'm not going to go on, I have to go home.
16 By the way, why is it I'm not being called" or
17 "What's going on?" Anything like that? Did you
18 ask that question to anybody?

1:20:26 19 A. Well, they said they decided not to put
20 me on.

21 Q. Did you ask that question is my question.

22 A. No, because they were going --

23 Q. I'm not asking you why. I'm just asking

W. Kip Viscusi, Ph.D.

1:20:52 1 you did you ask. It's a fairly simple question,
2 yes or no. Do you recall asking them, "Okay, I'm
3 not going on, is that right," or "How come I'm not
4 going on" or --

1:21:00 5 A. No. It was clear that I might not go on
6 before they made the phone call.

7 Q. And the reasons, again, that you
8 understood or believed were?

9 A. I don't think I'm required to disclose
1:21:16 10 all of the things we talked about relating to my
11 testimony and what the other side was going to say
12 in response to it.

13 Q. Well, you're not the judge here. You
14 can't decide what you're going to say or what
1:21:26 15 you're not going to say unless there's some
16 specific privilege that is being asserted, and I'm
17 sure Mr. Atkeson is capable of instructing you not
18 to answer if he feels a privilege is being
19 violated. You can answer the question, sir.

1:21:30 20 MR. ATKESON: Well, I'm certainly
21 telling him not to guess if he doesn't know.

22 BY MR. WITHEY:

23 Q. I'm just asking what your understanding
24 was why you didn't testify.

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51956 8392

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W. Kip Viscusi, Ph.D.

11:21:56

1

A. There's a number of things that came up regarding documents, so I think it had to do with document classifications and things like that.

2

3

4

Q. What about document classifications?

11:22:08

5

A. Whether some may have been misclassified or something like that, or misdesignated.

6

7

8

Q. Which documents were misdesignated or misclassified?

9

A. Draft of my book.

11:22:18

10

Q. Anything else?

11

A. Not that I know of.

12

Q. Did you turn over a draft of your book?

13

A. No. Nobody asked me for a draft of my book.

14

11:22:30

15

Q. What does the draft of your book have to do with misclassification of documents then?

16

17

A. It came out of the Jones Day files;

18

I think. I don't know where it came from.

19

Q. So there was a draft of your book that

11:22:48

20

came out of the Jones Day files?

21

MR. ATKESON: He said he didn't know where it came from.

22

23

A. Right. I don't know where it came from.

24

Q. Well, you said something about out of the

JONES FRITZ & SHEEHAN

51956 8393

W. Kip Viscusi, Ph.D.

51956 8394

11:22:54 1 Jones Day file. What were you --

2 A. Came out of somewhere. I don't know
3 where it came from.

4 Q. And there was a draft of your book. Is
11:22:58 5 that right?

6 A. Right.

7 Q. Did you ever see the draft of your book?

8 A. Yes.

9 Q. When did you see it?

11:23:08 10 A. I saw this as well as a number of other
11 documents, not just that.

12 Q. Okay.

13 A. The afternoon before I was going to
14 testify.

11:23:16 15 Q. And who showed it to you?

16 A. I don't know if anybody showed it to me.
17 It was just, here's a box of documents.

18 Q. And you understood that -- What were the
19 other documents?

11:23:28 20 A. All the exhibits that were going to be
21 used by the plaintiffs.

22 Q. And was there something about this draft
23 of the book that you discussed with tobacco
24 industry counsel that led you to not be called?

JONES FRITZ & SHEEHAN

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in HUMPHREY

W. Kip Viscusi, Ph.D.

11:23:48 1 A. Well, I knew there was some problem with
2 how it had been designated or something, was one
3 issue. I don't know what made them make the
4 decision, since I wasn't there for the decision,
11:24:00 5 but that seemed to be the biggest controversy that
6 afternoon.

7 Q. Did you provide a draft of your book to
8 any of the attorneys for the tobacco industry?

9 A. I had sent as a courtesy when I sent it
11:24:10 10 off to Oxford University Press, sent a copy to
11 Barbara Racir.

12 Q. Why?

13 A. She had given me the Audits & Surveys
14 data.

11:24:16 15 Q. The 1985 data?

16 A. That's correct.

17 Q. Any other reason?

18 A. No. I wasn't working for her at that
19 time.

11:24:24 20 Q. Did you want to work for her?

21 A. No, because there's no reason to work for
22 her, and the book was done.

23 Q. Well, as I understood it, it wasn't the
24 actual book, it was a draft of the book.

JONES FRITZ & SHEEHAN

51956 8395

W. Kip Viscusi, Ph.D.

1:24:42 1 A. Draft of the book where I essentially
2 wanted to send it to her as a courtesy. She didn't
3 comment on it other than to say, you know, "That's
4 nice." I wanted to thank her for letting me have
1:24:50 5 the data.

6 Q. Did you talk to her about it, the draft?

7 A. I don't recall if I ever talked to her.
8 She may have sent me a letter or something, but
9 I don't recall talking to her.

1:25:04 10 What did the letter say?

11 A. I'm not sure I got a letter. It could
12 have been a phone call, it could have been a
13 letter. But it was, you know, "It looks fine."

14 Q. Any other specific comment?

1:25:14 15 A. Nothing about the substance of the book
16 whatsoever.

17 Q. What was the time interval between when
18 you sent her the draft of the book and when the
19 book was published?

1:25:32 20 A. I don't know. We just sent the book off,
21 you know. The book goes out for review, I revised
22 the book in response to the reviews, then the book
23 is published. And during that time interval I did
24 no work whatsoever for any cigarette industry

W. Kip Viscusi, Ph.D.

11:25:44

1

people.

2

Q. So I take it you had ceased any contact with Barbara -- How do you pronounce her last name?

3

A. Kacir.

11:25:54

5

Q. -- Kacir because you testified previously, as I understood it, you ended that project on this 1985 survey around 1988 before you went to Duke. Correct?

9

A. That's correct. And it may have slopped over but I don't think it did for very long.

11:26:10

10

11

Q. What may have slopped over?

12

A. When I turned in the reports. I'm not exactly sure of my moving date so I think I went to Duke in '88. I'm not exactly sure when it stopped.

11:26:24

15

Q. So it was '88, '89, '90, then?

16

A. I know the whole time I was working on this book I had no contact whatsoever with the tobacco industry people, including the time until it was published.

11:26:36

20

Q. Did you ever -- When did you first start writing the book or intend to write the book?

22

A. I don't recall that. I just don't remember.

23

24

Q. What year was it published?

W. Kip Viscusi, Ph.D.

11:26:42 1 A. '92.

2 Q. So as I understand your testimony, then,
3 you basically sent her a draft of this book out of
4 the blue and you hadn't had any recent contact with
11:27:04 5 her. Is that correct?

6 A. As a courtesy. And I said, you know,
7 "Because you were nice enough to give me the
8 Audits & Surveys" -- she gave me the Audits &
9 Surveys data, so I was in effect thanking her.

11:27:26 10 Q. And I guess I don't understand and maybe
11 you could help clarify why somehow this draft of
12 the book that you were provided or shown at least
13 right before your testimony in any way prevented
14 you from testifying or led to the decision that you
11:27:46 15 wouldn't testify.

16 MR. ATKESON: Objection, asked and
17 answered.

18 BY MR. WITHEY:

19 Q. Could you explain that to me, please?

11:27:52 20 A. I don't -- I'm not a lawyer so I don't
21 know, sort of, the rules.

22 Q. Right.

23 A. All I know is the book may have been
24 misclassified in some way in terms of how it was

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W. Kip Viscusi, Ph.D.

51956 8399

11:27:58

1 designated.

2 Q. Well, was the book designated as one of
3 the documents, the published book, not the draft,
4 designated as one of the documents that you were
5 going to rely upon in your testimony as you've done
6 here?

11:28:08

7 A. I don't know what they did.

11:28:20

8 Q. Well, you certainly were questioned at
9 your deposition about what was in your book, were
10 you not in Minnesota?

11 A. Yes. My book certainly is fair game.

12 Q. Were there any differences between the
13 draft and the published version?

11:28:34

14 A. I revised it in response to the two
15 reviewers' comments that I got.

16 Q. And you don't know who those were?

17 A. No. They're anonymous.

18 Q. Any other revisions?

19 A. No.

11:28:48

20 MR. WITHEY: Why don't we -- We need
21 to take a tape break.

22 THE VIDEOGRAPHER: This marks the end
23 of tape number 1 in the deposition of W. Kip
24 Viscusi. Going off the record. The time is 11:28.

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

51956 8400

1:29:22

1

(Short recess taken.)

2

THE VIDEOGRAPHER: Back on the

3

record. Here marks the beginning of tape number 2
4 in the deposition of W. Kip Viscusi. The time is
11:34:40 5 11:34.

6

BY MR. WITHEY:

7

Q. What is your training in the creation or
8 development of surveys?

9

11:35:00

10

A. Well, I've been doing it since I believe
11 1984, and I guess it's learning by doing. I've
12 worked with marketing professors on survey design
13 and I've been running surveys nonstop for fourteen
years.

14

1:35:14

15

Q. Do you have any formal training in the
16 design of a survey?

17

A. How to write a survey?

18

Q. How to design it.

19

1:35:32

20

A. Well, I guess there's two aspects. One
19 is the survey text, and for that it's been working
20 with actual people who have done this, so I've
21 worked with them on projects. I'd call that
22 training in the sense of working with professors,
23 marketing professors, for example. In terms of
24 sampling, I'm not a sampling expert, so that

W. Kip Viscusi, Ph.D.

1:35:46 1 I don't view that as my area of expertise. It's
2 drafting of surveys.

3 Q. By formal training I usually mean
4 education, meaning actual courses in survey design.

11:35:56 5 A. You know, the survey design classes are
6 typically sampling classes. I don't know of any
7 courses that Harvard, for example, offers on how to
8 design a risk perception survey.

9 Q. So you've not taken a class in survey
11:36:08 10 design. Is that correct?

11 A. That's correct.

12 Q. Is designing surveys on people's health
13 or -- strike that. Is designing surveys about
14 people's beliefs about health risks something
15 economists ordinarily do?

1:36:20 16 A. It's something I've been doing for
17 fourteen years. It's not something every economist
18 does, but I'm not the only economist who's ever
19 done it.

1:36:32 20 Q. Who designed the survey instrument you
21 used in 1991?

22 A. I did.

23 Q. Has it ever been peer-reviewed?

24 A. Yes, the Oxford University Press book was

W. Kip Viscusi, Ph.D.

11:36:40 1 peer-reviewed.

2 Q. Well, but that wasn't a book that
3 described the design of the 1991 survey, did it?

11:36:56 4 A. Yes, it did. It talked about, you know,
5 the questions I asked, so the exact wording of the
6 questions appears in the book. If people don't
7 like the wording of the questions they can comment
8 on it.

11:37:04 9 Q. But understanding the design of the
10 survey is more than just the questions asked.
11 Correct? It includes the structure of it, how the
12 questions are posed, who's going to do the
13 questions, what ages, what time periods are
14 covered, et cetera. Right?

11:37:20 15 A. So if you want to include everything, no,
16 I did not have a peer review of the entire survey
17 text and the strategy except insofar as it is
18 discussed in my book, and that's been peer-
19 reviewed.

11:37:34 20 Q. Has it been criticized?

21 A. Well, I don't know if anybody's ever
22 criticized it, but I've never seen anybody
23 criticize it.

24 Q. You are not aware of any publications

W. Kip Viscusi, Ph.D.

11:37:40 1 which criticized the survey questions?

2 A. No, I'm not.

3 Q. Let me just go back to your conclusions
4 in your report related to the overperception of
11:38:04 5 risks or what you call the overperception of risks.
6 You compare, as I understand it, the mean
7 perception of risk from the '85, '91 and later in
8 the '97 survey to the actual risk of developing
9 either lung cancer or dying from lung cancer or the
11:38:30 10 other diseases that you referred to in the survey.

11 Is that generally correct?

12 A. That's correct.

13 Q. And the use of the mean in this context,
14 wouldn't that depend upon the variations in the
1:38:52 15 various categories that are set forth, i.e., zero
16 to nine, ten to eleven or ten to nineteen, whatever
17 they are. I mean, in other words, if there's large
18 variations, is the use of the mean appropriate in
19 the sampling sense?

1:39:04 20 A. I used the exact answers people gave, so
21 I didn't use the categories.

22 Q. Well, but you grouped them into a mean as
23 49 percent or whatever percentage, did you not, in
24 your book and in your publications?

JONES FRITZ & SHEEHAN

51956 8403

W. Kip Viscusi, Ph.D.

1:39:14 1 A. The mean is the overall mean for the
2 sample using the exact responses of the individual,
3 not the midpoint of the category in which I put
4 them.

1:39:28 5 Q. Okay. Then have you changed the estimate
6 of actual risk of dying from lung cancer between
7 1985 and the 1997 survey in your reports of it?

8 A. I didn't change the reference point risk
9 level, no.

1:39:56 10 Don't you use the term, I mean use the
11 risk level of .05 to .10 as applied to the 1985
12 data, yet later in 1997 you use the .06 to .13?

13 A. That's from 1991.

14 Q. Okay, 1991.

1:40:08 15 A. That's correct.

16 Q. So there was in your judgment an increase
17 in the relative risk of dying from -- Strike that.
18 There was an increase in the absolute risk of dying
19 from lung cancer or other diseases between --

1:40:22 20 Strike that.

21 So there was an increase in the
22 absolute risk of dying from lung cancer between the
23 '85 and the 1991 analysis. Correct?

24 A. That's not in my judgment. These were

W. Kip Viscusi, Ph.D.

11:40:34 1 using the Surgeon General's reports and taking them
2 at face value.

3 Q. So what was the source of your 5 to
4 10 percent in 1985?

11:40:46 5 A. It's all in my book, Health and Human
6 Services; Department of Health and Human Services
7 documents.

8 Q. It used the survey from 1982. Correct?
9 I mean, not the survey, the risks, the relative
11:40:58 10 risks, and then from which you calculated the
11 absolute risk of dying from lung cancer in 1982.
12 Correct?

13 A. I don't recall the exact year but it is
14 in my book.

11:41:12 15 Q. But then in your book I thought you cited
16 to the same 1982 document as opposed to the 1989
17 Surgeon General's report. Am I mistaken? I mean,
18 I might be mistaken, but....

19 A. Where? For what?

11:41:24 20 Q. For the absolute risk of dying from lung
21 cancer.

22 A. For what year?

23 Q. For what was presented in your book.

24 A. Well, the 1985 survey, you'd want to cite

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W. Kip Viscusi, Ph.D.

1:41:40 1 documents published before, 1985 or before.
2 I wouldn't want to cite a 1989 document for the
3 1985 survey.

11:41:52 4 Q. No, but you'd want to cite the 1989
5 absolute risk rather than the 1982 absolute risk in
6 a book published in 1992. Correct?

7 A. I'm not talking about the risk in '92.
8 I'm talking about the risk at the time of the
9 survey. So for 1991 I obtained what I considered
11:42:08 10 to be the most recent risk information available,
11 and that's cited in the book.

12 Q. So you wanted to make sure that there was
13 a correspondence between the time the survey
14 questions were asked and the actual risk known at
11:42:18 15 that time then. Is that correct?

16 A. That's correct.

17 Q. And it is important in doing this work of
18 risk perception to be specific about what time
19 period you're talking about. Correct?

11:42:28 20 A. You'd want the risk perceptions to
21 reflect the state of the information at that time,
22 yes.

23 Q. So, for instance, 1997, the 1997 survey
24 would reflect the state of information and risk

JONES FRITZ & SHEEHAN

51956 8406

W. Kip Viscusi, Ph.D.

11:42:40 1 perception in 1997?

2 A. That's correct.

3 Q. And you have not yourself applied that
4 risk perception to what risk perception existed,
11:42:52 5 for instance, in the 1950s. Correct? In other
6 words, you haven't said, well, what people knew in
7 the '50s was the same as they knew in 1997.
8 Correct?

9 A. I've never said the knowledge in the '50s
11:43:02 10 was the same as '97, no.

11 A. In other words, you have not applied your
12 1997 risk perception data back in time to
13 characterize risk perception in the 1950s or 1960s
14 even. Correct?

11:43:14 15 A. No.

16 Q. It's not correct?

17 A. I've never done the extrapolation.

18 Q. So it is correct that you haven't done
19 the extrapolation?

11:43:22 20 A. That's correct.

21 Q. And the same would be true of 1985 data
22 from the Audits & Surveys, that you have not
23 applied that data to the risk perceptions of the
24 people generally that might be present any time

JONES FRITZ & SHEEHAN

51956 8407

W. Kip Viscusi, Ph.D.

1:43:40 1 before 1985. Correct?

2 A. As a cross-section, no.

3 Q. Well, have you applied it in any way?

4 A. Well, I've got '85 and '97. We know that
1:43:54 5 risk perceptions haven't changed starkly over that
6 time period, which seems to suggest that they have
7 been relatively stable over time.

8 Q. Between '85 and 1997. Correct?

9 A. That's correct.

1:44:02 10 But you're not saying --

11 A. And '91 and '98. So we have four points
12 and they all look, you know, pretty healthy in
13 terms of high risk perception.

14 Q. What diseases were included within your
1:44:18 15 broader category of death from other causes in
16 addition to lung cancer in your survey?

17 A. Lung cancer, heart disease, throat
18 cancer.

19 Q. Any others?

1:44:34 20 A. And other causes of death linked to
21 smoking.

22 Q. Did you ever attempt in any survey to
23 identify the incidence of those diseases as opposed
24 to death from those diseases?

JONES FRITZ & SHEEHAN

51956 8408

W. Kip Viscusi, Ph.D.

1:44:40

1

A. No.

2

Q. Is that a relevant question to ask?

3

A. You can. You could ask that question.

4

Q. In other words, risk perception of death

1:44:52

5

is one set of questions. Risk perception of

6

actually contracting a variety of diseases is

7

another question. Fair enough?

8

A. That's correct.

9

Q. And did you ask, for instance, any

1:45:06

10

questions about risk perception of impotency from
smoking cigarettes?

11

12

A. No.

13

Q. Did you have an understanding at any time

14

that impotency, there's an increased risk of

1:45:14

15

impotency from smoking cigarettes?

16

A. I know there's been articles on that.

17

Q. For some time. Correct?

18

A. I don't know when the first article came

19

out. I'm not sure the extent to which or when such

1:45:30

20

effects were nailed down and I'm not sure how big
the effects are.

21

22

Q. Well, there has been recent publicity

23

around it. Correct?

24

A. That's correct.

JONES FRITZ & SHEEHAN

51956 8409

W. Kip Viscusi, Ph.D.

1:45:36

1

Q. 60 Minutes?

2

A. I didn't see it on 60 Minutes. I read about it in the paper.

3

4

Q. Prior to that time were you aware that cigarette smoking caused impotency?

1:45:50

5

6

A. Before this year? Probably not.

7

8

Q. Are there other diseases that you're aware of that cause illness but do not cause death that cigarette smoking causes?

9

1:46:12

10

11

A. Well, some things effect death. But, you know, you can have smoker's cough, you can have emphysema, chronic bronchitis.

12

13

Q. But emphysema causes death. Correct?

14

A. It can. Not always.

1:46:20

15

16

Q. Right.

17

A. Bronchitis.

18

Q. Well, generally impotency doesn't cause death. Right?

19

A. Right, wrinkles. You know, smoking

1:46:34

20

21

causes, increases the chance of wrinkles. So there's a variety of morbidity effects that have been linked to smoking probabilistically.

22

23

Q. And have you asked any survey questions about those, people's risk perception of those?

24

W. Kip Viscusi, Ph.D.

11:46:48 1 A. No, not in the United States.
2 Q. Have you done it abroad?
3 A. I'm working with people in Spain.
4 Q. Who are you working with in Spain?
11:47:02 5 A. Professors at University of Barcelona and
6 another university near them.
7 Q. And what are you asking?
8 A. Well, the survey has been run. I'm
9 working on the analysis of the data.
11:47:10 10 Q. What did the survey look at?
11 A. It includes other health outcomes other
12 than death. It includes heart disease and other
13 outcomes.
14 Q. Could you recall which outcomes are
11:47:18 15 included?
16 A. I don't recall off the top of my head.
17 Q. Was impotency included?
18 A. No.
19 Q. Was pregnancy, adverse pregnancy outcomes
11:47:32 20 included?
21 A. I forget.
22 Q. Sudden infant death syndrome, was that
23 included? SIDS.
24 A. I don't know what the label would be in

JONES FRITZ & SHEEHAN

51956 8411

W. Kip Viscusi, Ph.D.

11:47:40 1 Spain so I'm not sure.

2 Q. Do you know that smoking causes sudden
3 infant death syndrome?

4 A. I'm not sure -- Well, I think we can get
11:47:52 5 into a discussion of what we mean by cause, but....

6 Q. A cause of.

7 A. If you mean that it increases the
8 probability of it, that there's been studies
9 indicating it increases the probability of it,
11:48:02 10 yes. I know that there have been studies of
11 smoking causing birth defects and other problems.

12 Q. Has that been included in any of your
13 surveys?

14 A. No.

11:48:14 15 Q. So you have no -- Why did you add the
16 morbidity illnesses in Spain that were not put in
17 the 1987 survey?

18 A. I didn't add them, they were added by the
19 researchers in Spain. So I'm just helping them
11:48:22 20 analyze the data.

21 Q. You didn't recommend that it be added
22 yourself?

23 A. No.

24 Q. Now, you've testified or you've provided

W. Kip Viscusi, Ph.D.

11:49:00 1 us a disk with some information on it, and I'm
2 going to hand you what's been marked Exhibit 3 for
3 this deposition and ask if this is some of the
4 results you've run. Maybe your attorney or
11:49:14 5 somebody put A through, I guess, is it F?

6 MR. ATKESON: Counsel, let me clear
7 something up. Any A through F on there was put on
8 by someone in your office.

9 MR. WITHEY: Oh, okay.

11:49:20 10 MR. ATKESON: This was not provided
11 on a disk.

12 MR. WITHEY: Hard copy?

13 MR. ATKESON: And if you've only got
14 six pages, you're missing more than half the pages.

11:49:26 15 MR. WITHEY: No, I've got the ones
16 I want.

17 MR. ATKESON: Okay. But, in any
18 event, there were more pages provided.

19 MR. WITHEY: I apologize. We
11:49:32 20 actually put the lettering on it just so we'd be
21 able to identify this exhibit.

22 BY MR. WITHEY:

23 Q. So you have, is it A through F?

24 A. I'll lay claim to A through D, and E and

W. Kip Viscusi, Ph.D.

1:49:50 1 F were not documents I produced.

2 Q. Okay, let me see those. So you don't
3 even know where these came from then?

4 A. Never saw those before.

11:49:58 5 MR. WITHEY: I'll just withdraw
6 those.

7 MR. ATKESON: Well, counsel, let me
8 just tell you what we provided and what those may
9 be.

1:50:04 10 MR. WITHEY: Go ahead. I'm all ears.

11 MR. ATKESON: I provided you with the
12 raw data for both the 1997, 1998 and 1985 surveys
13 in computer form and this prints out as the coding.
14 We've also provided you how these were coded by
1:50:28 15 Audits & Surveys for '87 -- I mean for '85 and '97,
16 and these may be those. And those were things that
17 were provided to us directly by Audits & Surveys
18 and I'd given to you, but the witness has not seen
19 them.

1:50:40 20 But if you're interested in how the
21 data was coded, there's your information. This is
22 not something that Dr. Viscusi prepared; it's
23 something that Audits & Surveys prepared.

24 MR. WITHEY: All right.

JONES FRITZ & SHEEHAN

51956 8414

W. Kip Viscusi, Ph.D.

11:50:52 1 BY MR. WITHEY:

2 Q. So it is your testimony then you've never
3 seen E and F or electronic versions of E and F
4 before. Is that correct?

11:51:00 5 A. Well, we have the computer disk that we
6 use to analyze the survey and I assume this comes
7 off that, so.... I've not seen these pages or ever
8 had those printed out.

9 Q. Then I take it you've probably seen them
11:51:12 10 in electronic format, on a computer screen?

11 A. Well, we also -- I'm not sure I have.
12 Maybe my programmer has. I've seen the reports.
13 Yeah, I've seen the reports prepared by the survey
14 organization, so these are just their coding sheets
11:51:32 15 which I just handed over to my programmer.

16 Q. All right. Let me just ask you some
17 questions about Exhibit 3. First of all, what are
18 the actual numbers of current union smokers that
19 are reflected in those exhibits, if you know?

11:51:52 20 A. Eighty. Oh, current smokers?

21 Q. Yes.

22 A. We have seventeen.

23 Q. Out of a total population of how many?

24 A. Eighty.

W. Kip Viscusi, Ph.D.

-1:51:58

1

Q. Eighty?

2

A. Eighty union respondents.

3

Q. No, I mean the total population, all respondents.

4

'1:52:14

5

A. Well, there's almost a thousand people in the survey or over a thousand.

6

7

Q. Which survey? We're talking about the 1997 risk survey data. Correct?

8

9

MR. ATKESON: No.

-1:52:22

10

No, 1988.

11

1988?

12

A. 1998. I'm sorry.

13

1998, sorry, right, 1998.

14

Now, why did you do this run?

1:52:36

15

A. Because this case is about unions and I thought one ought to show what the union part of the sample thinks.

16

17

18

Q. And so this was work done specifically for this case?

19

1:52:44

20

A. That's correct.

21

Q. What is the statistical power of the survey in relation to lung cancer in current smokers?

22

23

24

A. Yeah, I don't have a standard error

W. Kip Viscusi, Ph.D.

11:53:04 1 printed out, but we test later or I test later the
2 running regression coefficients to see whether
3 union people matter or union status matters, but
4 you don't have those regressions here. So I could
11:53:18 5 give you -- If I had those regressions here
6 I could tell you how close union responses were to
7 non-union responses, but I don't have those
8 estimates in front of me.
9 Q. If you refer to B there, all that's been
11:53:34 10 marked B in that table shows is that the
11 differences between union members and others are
12 not statistically significant. Correct?
13 A. That's correct.
14 Q. And you'd have to review the disk
11:53:50 15 yourself to determine -- Strike that. Now, I take
16 it then by looking at -- Is there an analysis --
17 Well, besides lung cancer you looked at the
18 relation of these various variables of, what is it,
19 gender and union status and et cetera to the
11:54:24 20 perceived risk of dying from smoking and from years
21 of life lost. Correct?
22 A. That's correct.
23 Q. And as I understand it, the longer table,
24 labeled Sum, if you have it in front of you, that

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W. Kip Viscusi, Ph.D.

1:54:40 1 just shows the breakdown of the study population in
2 relation to each of the variables. Correct?

3 A. You didn't give me the table, so.... You
4 kept it.

11:54:41 5 Q. Is that here?

6 A. No. That's a different table.

7 Q. Well, do you have a table that reflects
8 the sum?

9 A. That's basically sample characteristics.

1:55:02 10 Q. Isn't the shorter sum table that you have
11 the origin of some of the values at least in A,
12 table A or document A there?

13 A. Well, the sum table includes the sample
14 characteristics and document A includes responses
15 to different questions, so clearly there's going to
16 be some relation between the two since the sum
17 table is the overall sample characteristics.

1:55:20 18 Q. Right. And I don't see the analysis
19 where people are separated on the basis of smoking
20 status. Am I missing something?

21 A. That's what this is, the union versus
22 rest of the sample. And I have other ones as well,
23 union versus non-union, which --

24 Q. No, I'm talking about smoking status.

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W. Kip Viscusi, Ph.D.

11:55:48 1 A. Yes, and within union we have total union
2 members, current smokers in union, former smokers,
3 never smokers.

4 Q. Can I see where that is? Is that in A?

11:55:54 5 A. A.

6 Q. So each of the people who responded they
7 were in a union also responded that they were
8 either current, former, or never smokers. Correct?

9 A. That's correct.

11:56:34 10 Q. In the survey design?

11 A. Right.

12 Q. In the instrument. And I take it there
13 was nothing in this survey that elicited a response
14 whether those people also had their medical bills
15 covered by a plan through a Taft-Hartley health and
16 welfare fund. Correct?

17 A. No. We have Medicare information but
18 that's it.

19 Q. But you designed this 1998 survey for the
11:57:06 20 purposes of this case. Correct?

21 A. No, I didn't. I designed this survey for
22 the purposes of the Massachusetts case, so it's
23 just an added bonus that I happened to include a
24 union question.

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

11:57:28 1 Q. All right.

2 Now, in G, which had been marked as
3 Exhibit 4, if I could direct your attention to
4 that, this is analysis of the 1997 risk survey
11:57:48 5 data. Correct?

6 A. Yes.

7 Q. And of course that survey did not look at
8 the issue of union member status. Correct?

9 A. That's correct.

11:57:48 10 Q. And there is, however, as I read that, a
11 lack of correlation between risk perception and
12 educational level.

13 A. That's correct. So that being better
14 educated doesn't necessarily mean you have a higher
11:58:00 15 risk perception.

16 Q. Yet you are aware of the data showing
17 that people with higher education smoke less.
18 Correct?

19 A. That's not a "yet." They're not
11:58:10 20 necessarily different. But, yes, both statements
21 are true.

22 Q. Yes.

23 A. Yes. It's not a "yet," though. So it's
24 not a contradiction in any way.

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W. Kip Viscusi, Ph.D.

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11:58:18 1 Q. Well, unless you see risk perception as
2 being a determinant of smoking status. Then of
3 course, if that's not true, then it follows
4 therefore that the fact that people who are better
11:58:30 5 educated don't smoke yet have the same risk
6 perceptions means that there isn't a direct one-to-
7 one correlation between risk perceptions and
8 smoking status. Fair enough? Would you agree with
9 that?

11:58:42 10 A. No. What I'm saying is that education is
11 correlated with your lifetime wealth, which is
12 going to drive smoking independent of the effect of
13 risk perceptions, and that within educational
14 groups you still get an effect of risk perceptions.

11:59:00 15 Q. Why don't we go into that topic. Oh, one
16 other set of questions. As I understand your
17 testimony, then, you utilized the risk of various
18 diseases and dying from various diseases contained
19 within the Surgeon General's report and then
11:59:20 20 converted them into an absolute risk of either
21 dying or incidence of disease. Correct?

22 A. Either Surgeon General's reports or other
23 government reports, yes.

24 Q. And you did not question the underlying

W. Kip Viscusi, Ph.D.

11:59:38 1 reliability of the Surgeon General's 1989 report as
2 it reports out the relative risk of various
3 diseases. Correct?

11:59:46 4 A. I didn't accept or reject any of the
5 Surgeon General's risk estimates.

6 Q. You utilized, however, the Surgeon
7 General's risk estimates both in terms of their low
8 value, their high value, and their midpoint.
9 Correct?

11:59:54 10 A. I've used the government risk estimates
11 of various kinds without accepting them but just
12 for the sake of establishing a reference point,
13 including EPA and OSHA as well.

14 Q. And including the 1989 Surgeon General's
15 report?

16 A. I don't know. Maybe I cite that; I'm not
17 sure it's cited. It may be.

18 Q. But you used those relative risks
19 yourself in order to compute the absolute risk that
20 is contained within your book and your studies?
21 That is, the absolute risk of dying of lung cancer
22 I think is between .18 and .33 or whatever it is.
23 Is that correct?

24 A. Actually, well, I didn't use the relative

W. Kip Viscusi, Ph.D.

12:00:34 1 risk ratios. They gave an actual estimate of the
2 number of deaths that I used.

3 Q. Okay.

4 Now, what are the determinants of

12:01:10 5 risk perception generally?

6 A. People have their prior risk beliefs that
7 are influenced by the various kinds of information
8 they may have heard in the past, so it's what
9 they've read, information provided on hazard
12:01:34 10 warning labels, information disseminated in the
11 media. And this is incorporated into their risk
12 belief based not only on their knowledge about risk
13 but based on how they learn about risks more
14 generally and their own experience. That could
15 affect things too.

16 (TELEPHONE RINGING)

17 Q. Media coverage is one of the sources of
18 information transfer. Correct?

19 A. Yes.

12:02:04 20 Q. Advertising is a source of information
21 transfer. Correct?

22 A. Yes, it can be.

23 Q. Well, it is in cigarette cases, to be
24 sure. Correct?

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W. Kip Viscusi, Ph.D.

12:02:10 1 A. It includes the warning label, yes.

2 Q. Well, I'm talking about advertising
3 generally, whether it has a warning label or not,
4 is one of the ways in which information is
12:02:22 5 transferred from in this case the manufacturer to
6 the consumer. Correct?

7 A. Yes.

8 Q. You testified, I thought, that you had
9 survey materials available to you that looked at
12:02:52 10 individuals under the age of 18. Correct? As it
11 relates to addiction.

12 A. Yes.

13 Q. But only as it relates to addiction.

14 Correct? Well, with the exception --

12:03:00 15 A. There are other things in the survey.

16 Q. What is the addiction survey that you're
17 referring to?

18 A. It's the 1993 CPS supplement, tobacco
19 supplement.

12:03:14 20 Q. Could you point this out on this one?
21 I'm sorry, I know you did this earlier, but I'm
22 trying to find it here.

23 A. It's the fifth item on the list.

24 Q. Okay. What's the results of that? Well,

W. Kip Viscusi, Ph.D.

12:03:30 1 strike that. What was the design of that survey?

2 A. As part of this study they asked the
3 respondents: Is cigarette smoking a habit, an
4 addiction, or both? So that was their question
12:03:40 5 relating to addiction.

6 Q. And as I recall -- Well, how many people
7 were involved in that study?

8 A. Thousands. This is a national study.
9 I don't recall the exact number but it should be on
12:03:56 10 the packet I've provided.

11 Q. The ages were 15 to 20. Correct?

12 A. That's correct.

13 Q. Were they segregated by each age?

14 A. Well, I was the one who did the
12:04:06 15 segregation, but yes. You can break out the age.

16 Q. Have you broken out the ages in what
17 you've provided to us?

18 A. I believe so.

19 Q. Now, and this was done in what year?

12:04:24 20 A. These runs were done this year. The
21 survey was '93.

22 Q. The survey was '93?

23 A. Right.

24 Q. Was it actually taken in '93 or was it

W. Kip Viscusi, Ph.D.

12:04:30

1 '92?

2 A. Well, they ran three waves of it,
3 September '92, January '93, and May '93. I'm not
4 exactly sure at this point which particular waves
5 had this question, so I would want to look that up.

12:04:46

6 Q. And do you understand from the medical
7 and scientific literature, do you have a lay
8 understanding that cigarette smoking is addictive?

12:05:02

9 A. I understand that smoking cigarettes is
10 hard to quit, but I'd want you to define what you
11 mean by addiction.

12 Q. What the Surgeon General defines as
13 addiction in his 1988 Surgeon General's report.
14 Have you ever read that?

12:05:10

15 A. I have. I don't recall it. I'd be happy
16 for you to tell me what that is.

17 Q. So you don't know what it is?

18 A. No, I don't.

19 Q. How was the word addiction used in this?

12:05:22

20 A. Is cigarette smoking a habit, an
21 addiction, or both.

22 Q. So do you draw a distinction between the
23 two?

24 A. I would think that addiction would be a

W. Kip Viscusi, Ph.D.

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12:05:34 1 stronger degree than habit, but both are in terms
2 of hard to quit; and I'm not sure how across
3 respondents the metric would vary.

12:05:54 4 Q. If you were to agree that in 1988 the
5 Surgeon General's report characterized the nicotine
6 in cigarettes as an addictive substance or as an
7 addiction, cigarette smoking as an addiction, let's
8 assume that that's true, would you -- Given that
9 that's true, what percentage of the people of age
12:06:16 10 15 to 24 characterize smoking as an addiction?

11 A. The numbers are all in the tables you
12 have. I didn't memorize the numbers.

13 Q. All right, let me show it to you. Let me
14 hand you, this is Number 5.

12:06:28 15 MR. WITHEY: I guess we should mark
16 this. Actually, at the break can we get a copy of
17 this? This is my only copy.

18 MR. ATKESON: Sure.

19 MR. WITHEY: Okay.

12:06:40 20 MR. WITHEY: It'll later be marked
21 as -- which one? -- 7.

22 BY MR. WITHEY:

23 Q. Let me hand you what's about to be marked
24 as Exhibit 7 for which we'll get a copy and see if

W. Kip Viscusi, Ph.D.

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12:06:50 1 you can answer the question, which is: What
2 percentage of the 15- to 20-year-olds characterized
3 cigarettes as an addiction or addictive I guess was
4 the question?

12:07:12 5 A. 77 percent said it was either an
6 addiction or both a habit and an addiction.

7 Q. That's not what I asked.

8 A. Well, that's --

9 Q. What percentage -- I think it's in
12:07:24 10 there -- what percentage of the respondents age 15
11 to 20 characterized it as an addiction or an
12 addictive substance?

13 A. Well, if they say both a habit -- Oh,
14 I'm sorry. I had habit. I'll just read you the
12:07:40 15 answers and you do with them what you want. 18
16 percent. 18.5 percent is habit. 21 percent is
17 addiction.

18 Q. All right.

19 A. Let me finish.

12:07:48 20 Q. Go ahead.

21 A. 59 -- You've been interrupting me all
22 morning. 58 percent is both. So that would
23 include addiction.

24 Q. So the percentage that called it

W. Kip Viscusi, Ph.D.

51956 8429

12:08:00 1 addiction was how many again? 20 percent?

2 A. No, it's 21 plus 58, so that would be
3 79 percent.

12:08:10 4 Q. Well, but some people in the 79 percent
5 thought it was a habit but not an addiction.
6 Correct?

7 A. No. They thought both. Habit, only
8 habit, is 18 percent.

12:08:18 9 Q. Only addiction is how much?
10 21 percent.

11 Q. Okay. Now, do you draw the conclusion
12 that of the, is it 79 percent total?

13 A. That's correct.

14 Q. For either a habit or addiction or both.
15 Correct?

16 A. No, for addiction or both -- Both a
17 habit and addiction. If I include habit as well,
18 then we're at 98 percent.

19 Q. So the people who think it's addictive,
20 at least addictive, are 79 percent?

21 A. Assuming habit is not addictive, yes.

22 Q. Right. Did the question assume that
23 habit was a different word than addiction?

24 A. They are different words.

W. Kip Viscusi, Ph.D.

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2:09:04

1

Q. And you gave the respondent a choice.

2

Correct?

3

A. That's correct.

4

Q. So would that show that the respondents

2:09:14

5

at 79 percent, assuming the Surgeon General's

6

report in 1988 is true that cigarette smoking is

7

addictive, underestimated the addictive quality of

8

cigarette smoking?

9

A. No. I don't know what was going through

2:09:28

10

people's minds when they said habit. In other

11

words, was that as severe as what the Surgeon

12

General meant? It's not clear to me that it

13

wasn't.

14

Q. Well, you believe that habit was less, a

2:09:42

15

less strong dependency than addiction. Correct?

16

A. Within any given individual respondent

17

I would think that habit would be less strong.

18

However, we don't know for any particular

19

respondent whether their scale for what's a habit

2:09:58

20

versus what's an addiction would also include what

21

the Surgeon General means by addiction, so we don't

22

know the correspondence between the two scales.

23

Q. Was the survey instrument designed to try

24

to find whether the risk perception of being

W. Kip Viscusi, Ph.D.

12:10:22 1 addicted to cigarette smoking was or was not over-
2 or undercompensated? Or over- or underappreciated.
3 Excuse me.

12:10:32 4 A. I don't know why they designed the
5 survey, so.... I didn't have any role in that
6 survey design.

7 Q. Do you draw the conclusion from -- What
8 conclusions or opinions have you reached from
9 reading this survey?

12:10:40 10 Knowledge that cigarette smoking is hard
11 to quit is almost universal.

12 Q. All right. How about, do you draw any
13 other conclusions?

14 A. That there's no evidence that people
12:10:50 15 don't appreciate that.

16 Q. Anything else?

17 A. That it is true of smokers as well as
18 non-smokers. It seems to not vary with demographic
19 group to a great extent. .

12:11:08 20 Q. And are you aware of any other survey
21 particularly related to this age group at any other
22 time period related to the question of addiction or
23 habit-forming or hard to quit?

24 A. I may cite some surveys in my book about

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W. Kip Viscusi, Ph.D.

12:11:32 1 young children and their beliefs, but I don't
2 recall off the top of my head any surveys dealing
3 with this.

12:11:40 4 Q. So I take it, then, you haven't relied
5 upon any other surveys dealing specifically with
6 this topic. Correct?

7 A. That's correct.

8 Q. The only one you have is the 1993 one?

9 A. The government survey, yes.

12:11:48 10 A. Yes, interpreted in 1997 by yourself.

11 Correct?

12 A. Well, I didn't interpret it. This is
13 just a computer printout of the factual responses
14 to the survey.

12:11:56 15 Q. Where did you get the data from which you
16 derived the computer printout?

17 A. The current population survey computer
18 file, I believe it's available on the U.S.
19 Department of Commerce website. Either that or we
12:12:18 20 got it on diskette, on CD-ROM. I'm not sure which
21 way we obtained it.

22 Q. At any rate, you've retained that.

23 Correct?

24 A. I think my wife got it. But yes.

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HUNTER

W. Kip Viscusi, Ph.D.

12:12:24 1 Q. You do have it?
2 A. We have it, yes.
3 Q. And I take it then it's publicly
4 available?

12:12:32 5 A. Yes.

6 MR. WITHEY: What time is it?

7 THE VIDEOGRAPHER: Ten past.

8 MR. WITHEY: All right. Let's take a
9 break for lunch; we'll be back at 1:00. Okay?

12:12:44 10 THE WITNESS: Fine with me.

11 MR. ATKESON: We'll come back at 1:00
12 and can we plan on finishing at 5:00?

13 MR. WITHEY: Well, if that's seven
14 hours. I don't think it is seven hours, though.

12:12:56 15 MR. ATKESON: We started at 9:15 and
16 we take time for lunch --

17 THE VIDEOGRAPHER: We're going off
18 the record. The time is 12:12.

19 (Luncheon recess at 12:12 p.m.)

12:28:14 20 AFTERNOON SESSION

21 12:49 p.m.

22 THE VIDEOGRAPHER: Back on the
23 record. The time is 12:49.

24 BY MR. WITHEY:

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in HUMPHREY

W. Kip Viscusi, Ph.D.

2:50:10 1 Q. Before the lunch break I had asked you to
2 describe the determinants in risk perception and
3 you described a number of factors that in a general
4 sense would go into risk perception. And the
5 questions I have now are going to be related to
6 some of the factors that might influence risk
7 perception, including the ones that you've
8 mentioned. I want to start with one that you've
9 done some work in, which is related to warning
10 label

2:50:58 10 label
11 A. All right.

12 Q. I mean, when was the first -- Do you
13 have a sense of when the first kind of warning
14 label that was ever on a consumer product in this
15 country?

2:51:10 15 country?
16 A. No.

17 Q. You've studied with, is it Charles
18 O'Connor, you've studied the chemical warning label
19 issue. Correct?

2:51:26 20 A. I ran a survey with him and wrote an
21 article with him, yeah.

22 Q. Isn't it true that chemical companies
23 like Stauffer Chemical and some of the other
24 members of the Chemical Manufacturers Association

W. Kip Viscusi, Ph.D.

12:51:40 1 have had warning labels on their products, you
2 know, earlier than World War II?

3 A. I don't know. That's before I was born,
4 so....

12:51:48 5 Q. How about in the '50s?

6 A. I'm sure there were -- In fact, I know
7 there were asbestos warning labels in the '50s, for
8 example.

9 Q. And do you believe that adequately worded
12:52:04 10 warning labels do increase risk perception to
11 consumers or workers who are using the product?

12 A. Not necessarily. I mean, the purpose of
13 a warning label is not to increase risk perception.
14 It is to provide accurate information regarding the
12:52:20 15 risks. So that could either increase or decrease
16 risk perception, depending on people's beliefs.

17 Q. And at least as it relates to the
18 chemical companies, these were warning labels that
19 they voluntarily put on their products by and
12:52:30 20 large. Correct? I mean, later some of them were
21 mandated, but they did this voluntarily. Correct?

22 A. Yes, I believe there are industry
23 standards for warning labels that they did have.
24 But they were not mandated, at least by OSHA, until

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

12:52:44 1 at least 1983.

2 Q. And risk labels or -- excuse me -- hazard
3 labeling or warnings on the packaging of products
4 is a means of transferring information to
12:53:00 5 consumers. Correct?

6 A. Yes.

7 Q. And the better the label is, the better
8 the information transfer is. Fair enough?

9 A. Structure and format. Well-designed
10 labels can improve the information transfer.

11 Q. And thus in the listener or the observer
12 of that label, increase their perception of risk if
13 it's adequately stated in the label itself.
14 Correct?

15 A. If people underestimate the risks, the
16 warning label can increase it; if they overestimate
17 it, it can decrease it.

18 Q. And would you agree it is particularly
19 important to have adequate warning labels in
20 circumstances where new information of risk is
21 available in the scientific literature?

22 A. Not necessarily. There are a lot of
23 different ways to convey information. Labels may
24 not necessarily make the most sense.

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

12:53:52 1 Q. Well, okay, but I guess what I'm asking
2 is: Is the fact that a label may communicate new
3 information not generally known, is that an
4 important aspect in understanding the risk to a
12:54:06 5 consumer or a user of a product?

6 A. Well, I'd turn it around differently,
7 which is that labels are not serving a constructive
8 function unless they convey new information to
9 consumers in a convincing manner.

12:54:28 10 Q. Now, in your work on warning labels
11 including in the chemical industry, you have
12 examples of the kinds of warning labels that were
13 appropriately applied to chemical products.
14 Correct? In your articles in the literature.

15 A. Yes.

16 Q. And have you yourself designed a warning
17 label?

18 A. Yes.

19 Q. And those include chemical products and
20 cleaning fluids? Or, what kinds of products have
21 you designed warning labels for, sir?

22 A. Well, for EPA studies we did warning
23 labels for a variety of chemical and pesticide
24 products. I've personally consulted in terms of

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W. Kip Viscusi, Ph.D.

12:55:06 1 actual warning labels used in the marketplace, in
2 addition to the Premier cigarette, I did Dexatrim
3 diet pills, Kiwi Shoe Polish. So I've consulted on
4 actual warning labels as well.

2:55:12 5 Q. Now, have you yourself done studies to
6 determine the effectiveness in terms of risk
7 perception of various warning labels?

8 A. Yes.

2:55:42 9 Q. And generally -- I know this is a broad
10 question -- but generally what do those studies
11 and surveys and research that you've done say about
12 the effectiveness of warning labels in terms of
13 risk perception?

2:55:50 14 A. Labels that convey new information in a
15 convincing manner can affect risk beliefs,
16 precautionary behavior, and decisions whether or
17 not to use the product.

12:56:15 18 Q. I take it by that that you're an advocate
19 of the use of adequate and appropriate warning
20 labels in products that pose risks?

21 A. I think that they can often serve a
22 useful function.

23 Q. Now, are you familiar with any literature
24 that's looked at the issue of whether the warnings

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W. Kip Viscusi, Ph.D.

12:56:40 1 on labels or packaging coming from the manufacturer
2 of a product influences risk perceptions as
3 distinct from those that might be imposed by
4 government?

12:56:52 5 A. I've done specific work in terms of a
6 controlled experiment on industry risk studies
7 versus government risk studies and how that affects
8 people's information-processing.

12:57:08 9 Q. But I wasn't asking about risk studies so
10 much as what the manufacturer is saying on a label
11 or packaging about a product. Do consumers respond
12 to that information if it's adequately conveyed?

12:57:24 13 A. Yes. But I've not done a controlled
14 study indicating whether having the company say
15 that as opposed to the government say that makes a
16 difference, except I've done that for risk studies
17 on chemical pollution hazards.

12:57:36 18 Q. And you understand that the first time
19 any warning label appeared on a package of
20 cigarettes was pursuant to the Federal Labeling Act
21 in 1966. Correct?

22 A. I thought it was 1964, the labels. No?
23 '66, okay.

24 Q. Yes, I think it was '66.

W. Kip Viscusi, Ph.D.

2:57:48

1

But prior to that time there wasn't
any warning labels on any package of cigarettes.
Correct?

3

4

A. Well, before they were mandated by the
federal government there were no warnings.

12:57:56

5

6

Q. In other words, your understanding is the
tobacco industry did not voluntarily place a
warning label on any of their product packaging.

7

8

Correct?

9

2:58:06

10

A. That's correct.

11

12

Q. And in fact they didn't have any on any
of their advertising prior to 1966. Correct?

13

14

A. No warning label, but there was
substantial discussion of health-related issues and
smoking.

2:58:18

15

16

Q. Have you reviewed any either industry
documents or the literature to determine what the
tobacco industry knew about the potential adverse
health effects of their product in let's say 1953
or '54?

17

18

2:58:46

19

20

A. I don't know their state of knowledge.
I know about some of the content of cigarette
advertising, but I don't know about what each
company knew by year.

21

22

23

24

W. Kip Viscusi, Ph.D.

12:59:00 1 Q. And you would agree, would you not, that
2 if an industry or a company had information that
3 could be appropriately communicated to its
4 customers through packaging, labeling, warnings,
12:59:16 5 et cetera, that would affect their risk perception
6 and their decision whether to utilize the product
7 or not, that that information should in fact be
8 conveyed?

9 A. No, because lots of times you get studies
12:59:30 10 in the literature indicating effects but you don't
11 always convey it because they're not nailed down.
12 This happens frequently with respect to
13 prescription drugs, for example, where there are
14 reports of adverse reactions. But until you nail
12:59:46 15 down the actual significance of these effects and
16 the fact that they're not random effects, you
17 wouldn't want to warn consumers about them. So
18 you'd want the risk to be well established.

19 Q. All right. And by well established,
12:59:58 20 meaning that the company believes that there are
21 risks and that the literature, the medical
22 literature, supports such risks. Fair enough?

23 A. That there's a scientific consensus that
24 there are true risks.

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W. Kip Viscusi, Ph.D.

01:00:10

1

Q. You need a scientific consensus that

2

there are risks before risks are warned about?

3

A. If there's debate and some people think

4

the risk is high and some people think the risk is

01:00:12

5

low, usually in situations of risk ambiguity there

6

are not hazard warning labels. There may be a

7

cautious statement, but typically warnings are

8

focusing on known risks for which there is actual

9

scientific evidence.

01:00:36

10

Right. So I take it, then, if you

11

believed that there was scientific evidence in 1954

12

that smoking caused lung cancer and further that

13

the tobacco industry researchers had also

14

determined that prolonged exposure to smoking

01:00:54

15

caused lung cancer, was a cause of lung cancer,

16

that that would be a risk that should be warned

17

about?

18

MR. ATKESON: Are you asking for a

19

legal conclusion now?

01:00:58

20

MR. WITHEY: No; from a risk

21

perception standpoint.

22

BY MR. WITHEY:

23

Q. In other words, what would be beneficial

24

to the consumers in that circumstance?

W. Kip Viscusi, Ph.D.

01:01:10 1 A. It's not clear that an on-product label
2 is the way to go, period. There are lots of other
3 ways information gets disseminated. So if there's
4 a study that is scientifically valid, it usually
01:01:20 5 gets published in the scientific literature and
6 covered in the popular press.

7 Q. Well, I'm asking about the manufacturer's
8 decision whether to put a warning label on. Okay?
9 I'm just talking about the labels right now. Okay?
01:01:38 10 So if you believe there was evidence in the
11 scientific literature in 1954 that smoking was a
12 cause of lung cancer and that the industry
13 researchers found and believed that prolonged
14 smoking was a cause of lung cancer, more probable
01:01:54 15 than not a cause of lung cancer, do you believe in
16 those circumstances that a warning label would be
17 appropriate in order to communicate that risk to
18 the customers?

19 MR. ATKESON: Same objection.

01:02:02 20 A. Yeah, the information would be in the
21 public domain, so I see that the industry doesn't
22 have any insider knowledge that they are trying to
23 convey. So hazard warnings are not necessarily
24 appropriate.

W. Kip Viscusi, Ph.D.

01:02:16 1 Q. What if the industry had done research to
2 determine that there were in fact carcinogens in
3 the product that was not generally known in the
4 public community? Then in that circumstance and
01:02:26 5 given the fact that there was evidence in the
6 literature that smoking was a cause of lung cancer,
7 then a warning label would be appropriate?

8 A. No. There are carcinogens in coffee,
9 there's carcinogens in apples and pears. I mean,
01:02:40 10 they're not as potent as the ones in cigarettes,
11 but there are dozens of products with carcinogens,
12 but we don't have warning labels on them.

13 Q. So it would not be appropriate then for
14 the industry to put that information on warning
01:02:50 15 labels, the tobacco industry, for instance, in
16 1954, if that information were known?

17 A. That information alone; which you've told
18 me does not necessarily justify warning labels on a
19 product.

01:03:02 20 Q. Do you believe that even if there is
21 evidence in the scientific community that smoking
22 causes lung cancer, do you believe it is important
23 for consumers to know that the tobacco industry
24 believes that smoking causes lung cancer? In other

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W. Kip Viscusi, Ph.D.

01:03:14 1 words, the manufacturer of the product.

2 A. I don't think it's important that the
3 manufacturer believe it. If you have the public
4 health establishment, for example, saying that
01:03:26 5 something is risky, I don't think it's going to
6 matter much whether the tobacco company agrees or
7 disagrees.

8 Q. Doesn't a warning label get a risk or --
9 Strike that. Doesn't a warning label transfer
01:03:38 10 information directly to the consumer in ways that
11 press articles or articles in the medical
12 literature may not?

13 A. Well, it transfers information along with
14 the product, but it also is limited to single-line
01:03:56 15 buzzwords. So they're much more succinct and less
16 developed than what you would get from let's say a
17 detailed report of the Surgeon General that's
18 picked up in the press.

19 Q. Well, but I asked you whether that
01:04:08 20 communicates some information directly to the
21 consumer whereas articles in the press may or may
22 not. Fair enough?

23 A. Well, we know that it definitely
24 accompanies the product. Whether it conveys new

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W. Kip Viscusi, Ph.D.

1:04:18 1 information or not depends on what's on the label.

2 Q. Had the tobacco industry placed a warning
3 label in 1954 that there was a risk of contracting
4 lung cancer from smoking, would that have been new
5 information in 1953 or '54?

6 A. I don't know what the state of the public
7 knowledge was or the scientific literature.

8 Q. Do you have an opinion that the warning
9 labels imposed by Congress in 1966 caused an
10 increase in the risk perception of cigarettes?

11 A. I don't know whether they increased risk
12 perceptions.

13 Q. Do you know if it decreased consumption
14 of cigarettes or at least played a role in the
15 decrease in consumption of cigarettes after that
16 period of time, mid '60s?

17 A. There was a fairly steady decline in the
18 tar-adjusted consumption of cigarettes that
19 occurred even before then, based on some of the
20 material that's in my file there. It is not clear
21 to me the extent of the role of warnings as opposed
22 to price changes. Some studies have found effects
23 of the various warning eras, other studies have
24 not.

JONES FRITZ & SHEEHAN

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W. Kip Viscusi, Ph.D.

01:05:32 1 Q. What is your opinion, if you have one?

2 A. I haven't done a separate analysis of
3 that.

01:05:46 4 Q. You understood then that the cigarette
5 manufacturers placed ads on television advertising
6 their product, correct, from 1950, well, from the
7 '50s until approximately 1971?

8 A. I remember the ads.

01:06:04 9 Q. And prior to -- Well, did television ads
10 have warning labels after 1966 or warning signs?

11 A. I don't recall any.

12 Q. And have you done any study to determine
13 what ~~the~~ perceptions, if any, people in the age
14 category of 12 to 17 had in the 1950s and early
15 '60s up until the warning labels came out?

16 A. There are some older studies in my book,
17 but they don't phrase the questions the way I do.
18 But there are some studies of the general
19 population as well as some studies of children.

01:06:42 20 Q. And those are cited in your book?

21 A. They are.

22 Q. And did you understand that the cigarette
23 manufacturers used famous people like Ed Sullivan
24 and Perry Como and other popular figures to

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W. Kip Viscusi, Ph.D.

01:07:02 1 advertise their products in the '50s and '60s?

2 A. I didn't know those particular people but
3 I do know they used celebrities.

4 Q. And you understood that those
01:07:08 5 advertisements with celebrities again did not
6 convey any information that cigarette smoking may
7 cause cancer. Correct?

8 A. I'm not sure what they said.

9 Q. Do you understand that the cigarette, the
01:07:24 10 tobacco industry utilizes promotional efforts
11 beyond advertising and has since, you know, time
12 immemorial? Well, strike that. In the last forty-
13 five years.

14 A. I don't know when they began, but to the
01:07:38 15 best of my knowledge they've used a variety of
16 promotions I know at least since World War II.

17 Q. And did you understand that the purpose
18 of promoting those promotions or PR efforts was to
19 enhance the sales of cigarettes?

01:07:48 20 A. Sure. They want to sell their product.

21 Q. And did you understand that they had
22 information in their own files that they did not in
23 fact share with either a public agency or with the
24 public, government agencies or the public about the

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W. Kip Viscusi, Ph.D.

01:08:06 1 potential adverse health effects of their product?

2 A. I don't know who "they" is, I don't know
3 what the files are, I don't know what the
4 information is.

01:08:14 5 Q. All right, let me rephrase the question.
6 Did you understand that people who manufactured and
7 sold cigarettes, companies that did that such as
8 Philip Morris, R.J. Reynolds, Lorillard, Brown &
9 Williamson, themselves have documents and had
01:08:30 10 documents going back to the '50s describing the
11 issue of smoking and health?

12 A. Yes. First of all, let me say companies
13 are not monolithic entities, so you can have a
14 staffer with lots of things they never share with
01:08:46 15 anybody else in the corporation. So it is not at
16 all clear to me who it is in the organizations,
17 whether you're talking about the CEO has these in
18 his file. So, is this top management has these in
19 the file? This is what we're going to be focusing
01:09:02 20 on? Or, are we going to include everybody that
21 works for the company maybe having something in
22 their files?

23 Q. Let's include the people that the top
24 management select to review the scientific

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W. Kip Viscusi, Ph.D.

1:09:10 1 literature, to do experiments or research, to
2 review that literature and to report back to them.
3 Let's assume that's who I'm referring to.

4 A. So the CEO --

01:09:20 5 Q. Do you understand they had -- The
6 question is, do you understand they had information
7 about smoking and health in their files during the
8 1950s and 1960s?

9 A. I've seen some memos and letters from
1:09:30 10 people either employed by them or letters to them
11 from the outside. But it was never clear to me
12 what level of the corporation these letters came to
13 or from and who read them.

14 Q. Did you try to find out?

1:09:46 15 A. No, because these were shown to me at a
16 deposition by the other people on the other side.

17 Q. And the question I have is whether --
18 Are you aware that these assessments of the risks
19 of smoking were not performed by the cigarette
1:10:06 20 companies, were generally not shared with
21 government agencies or with the public?

22 A. I don't know what they had or what they
23 shared.

24 Q. Could you think of any reason why a head

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W. Kip Viscusi, Ph.D.

1:10:18 1 of a company or a researcher in the company would
2 not want to share information with government
3 agencies that dealt with the issue of risk of their
4 product, including whether it caused lung cancer or
5 not?

MR. ATKESON: Don't speculate.

1:10:40 6 A. I don't know why they're doing it, but
7 I do know that it's not standard practice for
8 industries to always send to a government agency
9 everything they learn about a risk.
10

1:10:52 11 Q. What if the industry made a pledge to
12 share and cooperate with the government agencies to
13 share such information? In that circumstance can
14 you think of a reason why they would not, they
15 would hold back information about smoking hazards
16 from the public or from the government agency?

MR. ATKESON: Same instruction.

1:11:00 17 A. I don't know what was driving what they
18 did.
19

1:11:00 20 Q. Do you believe that one of the reasons
21 they did not want to share their documents
22 reflecting their assessment of the risk of smoking
23 and for instance lung cancer was they would be
24 concerned that their customers might decide not to

W. Kip Viscusi, Ph.D.

01:11:18 1 smoke, either not start smoking or to quit, and
2 that they would therefore lose profits?

3 MR. ATKESON: Same instruction.

4 A. I don't know that that's the case.

01:11:24 5 Q. Would you believe that could be one of
6 the reasons why the tobacco industry elected not to
7 share internal documents with the government?

8 A. I have no reason to believe that's one of
9 the reasons.

01:11:36 10 Q. You have no reason to believe it's one of
11 the reasons?

12 A. I have no evidence that that was one of
13 the reasons.

14 Q. Are you familiar with any tobacco
15 industry that terminated in-house research into the
16 adverse health effects of smoking?

17 A. I know research efforts come and go.
18 I don't know which ones continued them and didn't
19 continue them. I terminate research projects all
1:12:08 20 the time.

21 Q. Do you understand that one of the reasons
22 that the tobacco industry in the the '50s and '60s
23 elected not to provide their documents related to
24 their assessment of the adverse health effects of

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W. Kip Viscusi, Ph.D.

01:12:32 1 cigarettes to either the government agencies or the
2 public was their fear of being found liable in
3 courts of law?

01:12:32 4 A. I don't know that they failed to do
5 anything and I don't know, if there was such a
6 failure, what made them fail, so I have no
7 knowledge of any of this.

01:13:32 8 Q. Have you done a study to compare what was
9 known privately by the industry versus what their
10 public statements were regarding the health effects
11 of smoking?

12 A. No.

01:13:42 13 Q. Have you done any study to show in the
14 '50s and '60s what public statements were issued
15 by the tobacco industry regarding their product?

16 A. I have reviewed studies that have gone
17 over their advertising over that time period.

01:14:02 18 Q. Other than their advertising, have you
19 looked at any of the press releases issued by the
20 industry or The Tobacco Institute or the Tobacco
21 Industry Research Council or CTR or by any of the
22 companies to determine what impact the statements
23 by the tobacco industry may have had upon people
24 who were living in the '50s and '60s in deciding

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W. Kip Viscusi, Ph.D.

1:14:14 1 whether to smoke or not?

2 A. I was alive during that time period. So
3 to the extent that I saw things I would have
4 processed it, but I've not gone back recently to
5 try to review all these statements.

6 Q. If the tobacco industry -- Strike that.
7 If one of the tobacco companies, let's just say
8 R.J. Reynolds, since you've worked with them, and
9 their leading research scientists believed that
10 studies of the clinical data tended to confirm the
11 relationship between heavy and prolonged tobacco
12 smoking and the incidence of cancer of the lung and
13 that that was a correct assessment of the medical
14 literature at that time, do you believe the tobacco
15 company had a responsibility in making that
16 information known to the government and to the
17 public?

18 MR. ATKESON: Are you asking for a
19 legal conclusion?

20 MR. WITHEY: No; from the standpoint
21 of risk perception, the standpoint of whether that
22 would have been useful for consumers to know at the
23 time.

24 A. Well, as you've characterized it, they're

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W. Kip Viscusi, Ph.D.

01:15:12 1 not providing any new information; they're just
2 simply saying the scientific studies in the
3 literature they don't object to and they agree with
4 those linkages.

01:15:20 5 Q. Right.

6 A. And I would think that government health
7 officials could make those same judgments. I don't
8 see any special expertise that they have.

9 Q. Well, they make the product. Correct?

01:15:30 10 A. But they're talking about studies in the
11 literature and evaluating those studies.

12 I don't --

13 Q. Why do you assume it was from the
14 literature? I said clinical data. It may have
01:15:40 15 been from their own studies.

16 A. If you read back, way back, it sounded to
17 me when you posed the original question they were
18 verifying linkages that somebody else had shown
19 more generally. That's the way it was originally
01:15:50 20 characterized in your question.

21 Q. Well, no, let me read it again.

22 A. They corroborated it or --

23 Q. No. Studies of clinical data. Okay?

24 Didn't say publicly available; just said the

W. Kip Viscusi, Ph.D.

1:16:10 1 studies of clinical data tend to confirm the
2 relationship between heavy cigarette smoking and
3 the incidence of lung cancer.

1:16:18 4 A. By tending to confirm, were there
5 existing studies already or was this the first
6 study ever done?

1:16:30 7 Q. Well, it wasn't the first study but it
8 was a series of studies including those analyses
9 made by the tobacco industry themselves. And this
10 is in 1953. So would that information at that time
11 have been important to convey to consumers through
12 a warning label or ads or a news article of any
13 kind?

1:16:42 14 A. I don't know what new information we've
15 got, who did what, based on what you've said, what
16 studies are in the literature, what studies aren't,
17 what it means by tending to confirm. That seems
18 pretty squishy to me. I mean, I wouldn't want to
19 go to consumers and say we have studies that tend
20 to confirm something. I mean, that sounds soft.

21 Q. Would you agree, though, that it would be
22 inappropriate from a risk perception analysis for
23 consumers for that company that drew the conclusion
24 that I just read to you to state there isn't a

W. Rip Viscusi, Ph.D.

01:17:10 1 single shred of evidence linking cigarette smoking
2 and lung cancer?

3 A. I would want to know what the studies
4 are, so I would want to review the studies
01:17:20 5 themselves and what their ramifications are.

6 Q. You're saying that even if the head of a
7 company or the leading scientists within a company
8 concluded that prolonged cigarette smoking tended
9 -- that prolonged cigarette-smoking increased the
01:17:36 10 incidence of cancer in the lung, it would still be
11 appropriate for that same company to issue a
12 statement saying there's not a shred of evidence
13 linking lung cancer and smoking? That would be
14 okay in your judgment from a risk perception
01:17:48 15 standpoint?

16 A. I don't know whether there is scientific
17 disagreement within the company. I don't know what
18 the evidence is that the scientists looked at, how
19 strong the evidence is, and I don't know whether
01:18:00 20 anybody cares what the company says. If the
21 government's going to be announcing that there's a
22 risk, people aren't going to pay attention to the
23 company anyway.

24 Q. Is that true of the chemical industry,

W. Kip Viscusi, Ph.D.

1 sir?

2 A. In my studies I've found if the
3 government says there's a high risk, the industry
4 says there's a low risk, people will believe it's a
5 high risk. That is true.

6 Q. Do people tend not to believe the
7 chemical industry when they put a warning label on?
8 A. Well, I'm talking about disagreements in
9 risk. So, this is --

10 Q. That's the question I'm asking you. You
11 testified that people would not believe what the
12 company said anyway in this case. I'm asking you,
13 is that statement true of the chemical industry?

14 A. No, it's --

15 MR. ATKESON: That's a
16 mischaracterization of his testimony.

17 MR. WITHEY: I don't think so. But
18 your objection is noted.

19 A. It is also a mischaracterization of the
20 context in which this arose. The situation in
21 which it arose is where the industry says the risk
22 is low, which is what you're claiming the cigarette
23 industry did there, and the government said the
24 risk is high, and would people pay attention to the

W. Kip Viscusi, Ph.D.

01:19:00 1 cigarette industry, and I said I have direct
2 evidence on that based on a study I've done with
3 the chemical industry. So you'd want to have a
4 parallel situation where you have two people
01:19:10 5 disagreeing about the magnitude of the risk to
6 figure out whether people discount one of the
7 providers of the information.
8 Q. Well, the question was aside from the
9 government. The question was: Is it true that
01:19:22 10 when the chemical industry voluntarily without
11 government mandating it put warning labels on their
12 products, that people didn't believe it because it
13 was the chemical industry telling them that?
14 A. People will believe warning labels from
01:19:42 15 the chemical industry, perhaps.
16 Q. But it is your conclusion that in the
17 1950s people would not have believed warnings on
18 cigarette packaging? Is that your testimony?
19 Maybe I misunderstood. Because it came from the
01:20:04 20 tobacco industry.
21 A. No. We're not talking about a warning.
22 You were saying earlier, which is how we got into
23 this, if the cigarette company disavows a risk and
24 the government says it is risky, would people

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W. Kip Viscusi, Ph.D.

01:20:18 1 weight the disavowal.

2 Q. That's not my question. My question was:
3 Is it your testimony that had the tobacco industry
4 put a warning label in 1953, through the '50s and
01:20:30 5 up through it was mandated by Congress in 1966, is
6 it your judgment and your opinion in this case that
7 the consumers would not have cared what the tobacco
8 industry said about their product in this warning
9 label?

01:20:40 10 A. If the information was public knowledge
11 already they wouldn't have cared.

12 Q. Well, is it your understanding the
13 information was -- Strike that. Now, have you
14 made any assessment of the impact -- Strike that.

01:21:00 15 Are you familiar with the increase in
16 consumption of cigarettes in this country between
17 1953 and 1966 or '64?

18 A. It's in one of my charts.

19 Q. It shows a significant increase in the
01:21:18 20 consumption of cigarettes during that time period
21 in the U.S. population. Fair enough?

22 A. In per-capita cigarette consumption but
23 not in tar-adjusted cigarette consumption.

24 Q. And because you're not a medical doctor,

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W. Kip Viscusi, Ph.D.

01:21:36 1 you've not drawn the conclusion that merely
2 lowering the tar in a particular cigarette
3 necessarily leads to less disease in the people who
4 smoke. Correct?

01:21:40 5 A. I have drawn that conclusion.

6 Q. Despite the evidence of both the
7 compensation effect and the fact that people
8 actually smoke more or draw harder on the
9 cigarettes in order to get their unit of nicotine?
01:22:04 10 You're familiar with that factor, are you not?

11 You've written --

12 A. Certainly. The trends I've discussed
13 take into account compensation in terms of the
14 number of cigarettes smoked. They don't take into
01:22:18 15 account how you smoke the cigarettes. There's no
16 evidence that that fully offsets the effect. In
17 fact, experts on behalf of the plaintiffs have
18 testified that it reduces the risk of lung cancer,
19 and also there are statements in the 1989 Surgeon
01:22:38 20 General's report that they're safer.

21 Q. What are safer?

22 A. That there's a reduced risk of lung
23 cancer with lower-tar cigarettes. In fact, the
24 Surgeon General used to recommend low-tar

W. Kip Viscusi, Ph.D.

01:22:52 1 cigarettes as being safer. So there are statements
2 in government documents.

3 Q. It is your testimony that the 1989
4 Surgeon General's report says that smoking lower-
01:23:00 5 tar cigarettes reduces the health risk?

6 A. One of them does. I may have the year
7 wrong, but one of the Surgeon General's reports
8 does cite that statistic.

9 Do you know which one it is?

01:23:10 10 A. No. But if pressed, I may dig it out.

11 Q. Do you believe that the increase in sales
12 of filtered and low-tar cigarettes was a response
13 to health concerns?

14 A. I believe people were concerned about
01:23:20 15 health and that was one of the factors driving it,
16 yes.

17 Q. Do you believe that the tobacco
18 industry's policy of creating doubt about the
19 health concerns impacted public perceptions in the
01:23:40 20 '50s and '60s? I know you haven't studied this
21 specifically, but do you have an opinion about
22 that?

23 A. I have no opinion about that.

24 Q. Now, you've cited in some of your work,

W. Kip Viscusi, Ph.D.

01:23:56 1 I think in your book, studies of surveys that were
2 done prior to the 1985 survey that Audits & Surveys
3 did. Is that correct?

4 A. That's correct.

01:24:06 5 Q. And that includes some work by Slovic and
6 some Gallup and Harris polls, amongst other things.
7 Correct?

8 A. That's correct.

1:24:24 9 Q. Now, as I understand it, Slovic in 1980
10 published work ordering the perceived risk of
11 thirty activities and technologies. Correct?

12 A. That's correct.

13 Q. And smoking was one of those listed along
14 with a whole lot of other things, motor vehicles,
1:24:36 15 motorcycles, surgery, swimming, electric power,
16 et cetera. Correct?

17 A. That's correct.

18 Q. And in fact at that time, in 1980, the
19 leading cause of disease and illness and death of
1:24:52 20 all of those listed was in fact smoking. Correct?

21 A. Not if you're not a smoker. So it's
22 unclear --

23 Q. Well, if you're a smoker. I suppose
24 you're not at risk from riding a motorcycle if you

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W. Kip Viscusi, Ph.D.

01:25:04 1 don't ride a motorcycle either.

2 A. But this distinction is nontrivial in
3 terms of how people answer the question.

4 Q. Could you answer my question then for
01:25:10 5 smokers? If you smoke --

6 A. It's number one if you're a smoker.

7 Q. Okay. If you smoke and ride motorcycles,
8 which is the higher risk?

9 A. In terms of lifetime risk?

10 Q. Yes.

11 A. Smoking.

12 Q. On any of those that you've listed in
13 your book, that Slovic lists that you cite, are any
14 of those higher risk of dying or contracting
01:25:36 15 diseases than smoking?

16 A. Yes, for the two-thirds of the sample
17 that don't smoke. So these questions were asked of
18 everybody, not just smokers.

19 Q. Okay.

01:25:52 20 A. Maybe more than two-thirds. You know,
21 the League of Women Voters is not a random sample.

22 Q. How about college students? Was that a
23 random sample?

24 A. No. And these are convenience samples of

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01:26:04 1 people in his class.

2 Q. So you'd probably put in your book then
3 the limitations of this study. Fair enough? That
4 you're just describing.

01:26:12 5 A. No, I just cited -- I'm just going
6 through all the different studies. I did say when
7 I got to the risk perception questions that I was
8 the only one to have done the risk perception
9 question right.

01:26:22 10 Q. Nobody else has done them right as far as
11 you're concerned?

12 A. No one else has asked quantitative risk
13 perceptions.

14 Q. You've asked both qualitative and
15 quantitative in your surveys. Correct? I mean in
16 the surveys you've relied upon in this study.
17 Correct? In this report.

18 A. Depends what you mean by qualitative.
19 What do you mean by qualitative?

1:26:40 20 Q. The way you talk about it in the article
21 you wrote critical of Slovic. You know which
22 article I'm talking about?

23 A. Yes.

24 Q. Okay.

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1:26:48 1 A. I don't recall any qualitative smoking
2 risk questions that I've asked.

3 Q. Not that you've asked. But in the four
4 surveys that you cite in your report that we
5 discuss, in the five, actually, including the
6 addiction one, are there any qualitative questions
7 asked?

8 A. The addiction one is not my survey.

9 Q. But you cite it in support of your
10 conclusions, do you not?

11 A. Right. But I'm not responsible for every
12 question that's in the survey.

13 Q. I'm just asking you whether any of those
14 five surveys have qualitative questions, whether
15 you wrote it, designed it or not.

16 A. None that I rely upon.

17 Q. Did they ask any qualitative questions
18 whether you rely upon them or not?

19 A. From my four surveys where I have some
20 sort of control, I don't recall any qualitative
21 risk questions dealing with cigarette smoking;
22 they're all quantitative.

23 Q. Were there any qualitative risk questions
24 asked in any of the surveys that you cite in your

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01:27:42 1 report, in your articles?

2 A. I've already answered that.

3 Q. Well, you said "Not that I rely upon."

4 A. Right. I mean, you can ask other
01:27:54 5 questions that you're not going to even use, just
6 to engage the respondent, but that doesn't
7 necessarily mean that you take it seriously.

8 Q. I don't know if it was taken seriously.
9 I'm just asking: Were those questions asked, a
01:28:04 10 question that you would term qualitative, were they
11 asked? Whether you used it or not I'm not asking
12 you.

13 A. I don't know all the questions that were
14 in the EPS. I do know the questions in my four
01:28:14 15 surveys. There were no qualitative smoking
16 questions.

17 Q. Okay. Now, you cite this Slovic work to
18 say what is striking is that in all cases smoking
19 risk will rank among the top four perceived risks.
01:28:38 20 Correct?

21 A. Yes. I thought that was pretty good.

22 Q. Pretty good in what sense, sir?

23 A. That this seemed to suggest at least
24 among his sample that smoking risks were reasonably

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1 highly regarded among the respondents.

2 Q. But it is true, is it not, that for
3 instance the active club members that he surveyed
4 which put smoking as the third perceived risk,
5 below handguns and nuclear power, that that was an
6 underestimation of the risk. Correct?

01:29:05

7 A. No, because if they're asking about risks
8 to themselves and they're not smokers, it may not
9 necessarily be number one.

1:29:18

10 Q. Were they asked about risks to
11 themselves?

12 A. No, they were asked which are the largest
13 risks.

14 Q. Right.

1:29:22

15 A. I don't think it was personalized. So if
16 it's not conditional upon smoking status, cigarette
17 smoking is not necessarily number one.

18 Q. How would you have answered this question
19 then?

1:29:32

20 A. I wouldn't have asked the question to
21 begin with.

22 Q. No. How would you have answered the
23 question if asked?

24 A. Well, why don't you give me the exact

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01:29:36 1 wording of the question.

2 Q. Well, you cited it. I don't know what
3 the exact wording is.

4 A. I haven't read it in ten years, so....

01:29:42 5 In terms of --

6 Q. Order the perceived risk of these thirty
7 activities. And you've got the list of activities,
8 and I could tell them to you if you want to do it.
9 It's in your book. Which one would you rank as the
10 highest?

01:29:52 11 A. In terms of risks to me?

12 Q. No, that's not the question. I don't
13 think. Was it? I thought you said it wasn't a
14 specific personal question, it was the risk of
15 risks generally.

01:30:06 16 A. But you don't know how respondents are
17 thinking of that. So if I'm saying mountain
18 climbing or motorcycling, if that's not something
19 I do, I would not rate that high.

1:30:22 20 Q. So does somebody do nuclear power?

21 A. It's something we're all exposed to if
22 there's a nuclear power plant. But if you're
23 asking it in an area of the country where there's
24 no nuclear power plant, they may give you a

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01:30:34 1 different answer.

2 Q. Didn't you understand that Mr. Slovic was
3 at this time attempting to ask the question what
4 risk is perceived not to you personally but to
5 society in general and to rate those risks? In
6 other words, the people being asked the question
7 may not have been exposed to or performed all of
8 the things here; that it was done in the general
9 sense. Isn't that what you understood?

01:30:56 10 A. I don't know what Dr. Slovic's intent
11 was, but what matters is what was going through the
12 minds of the respondents when they answered the
13 questions. So they don't necessarily share, you
14 know, knowledge of his intent beyond what was in
01:31:06 15 the survey question.

16 Q. Did you know in the 1985 survey, do you
17 know whether the person that was being asked the
18 question thought, well, you mean if they smoked,
19 whether I will get lung cancer or whether someone
01:31:24 20 else will get lung cancer? Do you know that for a
21 fact as to every person that responded to that
22 questionnaire?

23 A. I know that that's what they thought the
24 relative risk was; and there have been numerous

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01:31:36 1 studies in the literature indicating, including
2 mine, that reference populations are an accurate
3 way to elicit personal risk beliefs.

01:31:45 4 Q. I think I asked you a different question,
5 which is: Do you know that the people that were
6 asked the questions in the 1985 Audits & Surveys
7 survey, do you know whether they, at least some of
8 them, believed they were being asked the question
9 personally are you at risk if they're smokers?

01:32:08 10 A. I believe that's the kind of thing this
11 question does pick up.

12 Q. Now, would you agree that different forms
13 of information transfer regarding risks may
14 influence the consumer in different ways?

1:32:36 15 A. You can tell consumers different things
16 with different mechanisms.

17 Q. And the weight that consumers attach to
18 various forms of information transfer may vary.
19 Fair enough?

1:32:50 20 A. It could, depending on what people say.

21 Q. Have you made any comparisons between the
22 prevalence or pervasiveness of the different forms
23 of information transfer that affect risk
24 perceptions that relate to smoking?

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01:33:50 1 A. In my book I summarize a variety of
2 different forms of information transfer and how
3 they've varied over time.

01:34:02 4 Q. I noticed. And I guess the question was:
5 Have you made any quantitative assessment or
6 qualitative assessment about the extent or
7 pervasiveness of various forms of information
8 transfer? For instance, you cite I think it was
9 twelve Reader's Digest articles in the 1950s or for
10 a decade from '53 to '63, I think it is, something
11 like that.

1:34:24 12 A. I do article counts, yes.

13 Q. The only article count that I saw on the
14 Reader's Digest was in your book, I think, or maybe
15 in other publications. You also understand, do you
16 not, that the tobacco industry spent billions of
17 dollars advertising their product from 1953 to
18 1966. Fair enough?

19 A. I don't know if it was billions. I know
1:34:52 20 they spent a lot of money. I'm not sure where it
21 was spent.

22 Q. You state in your book "A third source of
23 information is that provided by the cigarette
24 industry. That information, including advertising

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01:35:02 1 and other public relations efforts, will tend to
2 foster a positive view of smoking." Is that a true
3 statement?

4 A. Yes.

01:35:08 5 Q. And are you interested in a quantitative
6 sense to determine what the exposure of the
7 consumers and others in the public were to the
8 advertising and public relations efforts of the
9 tobacco industry?

01:35:20 10 A. We know that there was a lot of
11 advertising and a lot of ads that people saw.
12 There was certainly more advertising
13 dollars spent than the money spent purchasing
14 Reader's Digest, the twelve articles that you
01:35:32 15 referred to. Fair enough?

16 A. I wouldn't -- These are all guesses.
17 I wouldn't even want to begin making such off-
18 the-cuff guesses.

19 Q. So you think there's a possibility that
1:35:44 20 the amount of money people -- Strike that. Have
21 you made a comparison of the dollars spent in
22 informing the American customer by the U.S.
23 Government Department on Smoking and Health,
24 comparing that to the advertising and promotional

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1:36:04 1 budget of the tobacco industry?

2 A. Well, I didn't know there was such a
3 department of the government. But, no, I've not
4 compared government expenditures with company
5 expenditures.

6 Q. Would the amount of expenditures and the
7 prevalence of advertising versus the amount of
8 expenditures and the prevalence of what the
9 government put out be of interest to you in
10 determining risk perceptions and what people
11 understood about smoking in the 1950s and '60s?

12 A. Not very. Because the Surgeon General
13 can go out, call a press conference and doesn't
14 have to pay a thing for a press conference; and
15 then, when the cigarette industry purchases
16 advertising, not all of it affects risk
17 perception. So I wouldn't even know how to begin
18 the allocation.

19 Q. You understood that the television
20 advertising appeared on all television networks, at
21 least three major ones, in the '50s and '60s.
22 Correct?

23 A. Yes.

24 Q. You understood that they advertised in

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01:37:08 1 popular magazines, Life magazine, Time, et cetera
2 in the '50s and '60s. Correct?

3 A. Yes.

01:37:14 4 Q. You understood that they advertised in
5 the newspapers. Correct?

6 A. Yes.

7 Q. You understood that they advertised in
8 retail stores and convenience stores and places
9 where cigarettes were sold?

1:37:22 10 A. Yes.

11 Q. And you understood that they engaged in
12 promotional efforts including The Marlboro Cup,
13 including Virginia Slims, including other
14 tournaments and sporting events that certainly
1:37:38 15 brought people's attention to their product.
16 Correct?

17 MR. ATKESON: Counsel, let me just
18 make sure what time period we're talking about now.

19 MR. WITHEY: In the '50s and '60s.

1:37:46 20 BY MR. WITHEY:

21 Q. You can answer.

22 A. I don't know when The Marlboro Cup
23 started or those races.

24 Q. You understood they had promotional

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1:37:54 1 efforts beyond just advertising their product that
2 drew attention to their product and the positive
3 effects of it. Correct?

4 A. Yes.

1:38:06 5 Q. And you understood that they placed
6 advertisements or statements in newspapers about
7 the smoking and health issue, including in hundreds
8 and hundreds of cities in this country. Correct?

1:38:22 9 A. I'm aware of some that took place. I'm
10 not sure how regular an event this was.

11 Q. Have you made any attempt to quantify the
12 difference between how many times someone would see
13 a cigarette ad or promotional effort during the
14 '50s and '60s or see an ad on television compared
1:38:40 15 to when they might read a newspaper that contained
16 a statement by the U.S. Surgeon General?

17 A. No, because I saw no relevance to risk
18 perceptions.

19 Q. So the amount of information contained
1:38:56 20 has no relevance to risk perception. Is that your
21 testimony?

22 A. No. What you're saying is counts of ads
23 where somebody comes on the screen and says "Call
24 for Philip Morris," I don't see where that relates

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01:39:02 1 to risk perceptions, and why should I count those
2 and compare those to hits with the Surgeon General?

01:39:14 3 Q. Except you just finished testifying and
4 you put in your article that a third source of
5 information includes advertising and other public
6 relations efforts tending to foster a positive view
7 of smoking. So you understood that there is a
8 message conveyed within these advertisements or
9 other promotional activities by the tobacco
10 industry. Correct?

11 A. Not necessarily a health message.

12 Q. Well, a positive view of smoking. Fair
13 enough?

14 A. That's not -- Yes. But that's not
15 necessarily health.

16 Q. To your knowledge does the issue of
17 social acceptability or acceptance of a product
18 affect risk perceptions?

19 A. It depends on the mechanism. So that if
20 the social acceptability is such where everybody's
21 criticizing you for smoking, saying you're causing
22 them harm through environmental tobacco smoke, that
23 conceivably could affect your risk beliefs.

24 Q. Well, isn't the whole idea of the use of

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01:40:10 1 celebrities in promoting their product a way in
2 which they, the tobacco industry, hoped to gain
3 social acceptance of their particular product?

4 A. I don't see where that's risk-related,
5 but --

6 Q. So social acceptance has nothing to do
7 with risk perceptions. Is that your testimony?

8 A. I'm saying the fact that Ed Sullivan
9 pitched cigarettes, which you claimed earlier,
10 would not necessarily affect risk perceptions.

11 Q. It could, though. Correct?

12 A. Humphrey Bogart dying of cigarette or
13 lung cancer could affect them as well, so....

14 Q. Right, so.... If people who look healthy
15 and alive and doing exciting and energetic things,
16 that may create a perception that people who smoke
17 perform those kinds of functions. Fair enough?

18 A. It's not clear that advertising ever
19 affects the decision to use a product as opposed to
20 brand switching.

21 Q. The Surgeon General disagrees with that
22 in his 1994 report that you cite in your study.
23 Correct?

24 A. I didn't know the Surgeon General was an

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1 economist.

01:41:14

2 Q. Well, the Surgeon General does more than
3 add up dollars and figures and, you know, kind of
4 crunch numbers. The Surgeon General looks at the
5 public perception, does he not?

01:41:22

6 A. All I'm saying is that that's an economic
7 judgment and the Surgeon General is a medical
8 doctor, not an economist.

01:41:36

9 Q. But you understand the Surgeon General
10 employs people in a wide variety of disciplines in
11 order to write his report. Is that correct?

12 A. He does. But I don't know who wrote
13 that.

14 Q. Have you looked? Do you know the 1994
15 report I'm talking about, the effect of
16 advertisement on children, on teenagers?

17 A. I do know the report.

18 Q. You've cited it. Correct?

01:41:50

19 A. I've referred to it. I'm not sure if
20 I cited it in my Duke Law Journal paper or not.

21 Q. You did. So I take it you consider it at
22 least somewhat reliable to the extent to which you
23 cite it, anyway. Fair enough?

24 A. No. I just cited some numbers that were

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01:42:04 1 drawn from the national survey. It doesn't mean
2 I approve of anything that was said in the text
3 apart from the statistics.

4 Q. But you read it at least. Correct?

01:42:14 5 A. I read some of it. Didn't say I read all
6 of it.

7 Q. Well, did you read the part where they
8 cite the tobacco industry documents and the tobacco
9 industry judgment that advertising increases the
10 consumption of cigarettes, not just brand
11 switching? Do you recall that in the Surgeon
12 General's report in 1994?

13 A. I don't remember what I've read from
14 that.

1:42:32 15 Q. I take it you have not done an exhaustive
16 or -- strike that. I take it you have not done a
17 thorough review of the literature on the effect of
18 advertising, including industry documents, in order
19 to draw the conclusion that the role of advertising
20 is merely to get people to switch brands as opposed
21 to purchase more product?

1:42:46 22 A. Well, it is generally accepted in
23 economics not just for cigarettes but for all
24 products.

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1:42:56 1 Q. Well, I'm not talking about general
2 acceptance, I'm talking about in the context of the
3 cigarette marketing and advertising. You've not
4 done a thorough review of the literature, I take
01:43:08 5 it, to determine where the state of the art in the
6 literature is of the effect of advertising on
7 consumer preferences. Fair enough?

8 A. I've read some studies, but I'm not
9 testifying -- I'm not putting myself out as an
10 expert on that topic.
11 Q. Fair enough.

12 So let me, just to cap this off, do
13 you believe then that the issue of risk perception
14 -- particularly let me address it in terms of the
1:43:38 15 '50s and '60s -- was or was not impacted by how
16 much information was transferred by the tobacco
17 industry giving it a positive view of smoking, as
18 opposed to other publications, including the
19 Surgeon General report that you described and press
1:43:54 20 releases around it, describing the risks of
21 smoking?

22 A. I have no evidence that the tobacco
23 industry statements affected risk perceptions.

24 Q. That wasn't my question. I asked you if

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01:44:06 1 you'd done a study to compare the prevalence -- by
2 prevalence I mean how many times a TV or magazine
3 or newspaper ad of smoking giving it a positive
4 image compared to consumers in the '50s and '60s
01:44:20 5 before the warnings came in, as opposed to
6 statements made in a Reader's Digest or by the
7 Surgeon General. You've made no study of that.
8 Correct?

9 A. No. But I do cite the advertising
01:44:32 10 studies in the literature in my book. And in fact
11 not all advertising is positive, in that many of
12 the ads mention health effects, which would have a
13 negative effect.

14 Q. Have you read the history in Chapter 8 of
01:44:46 15 the Surgeon General's report, the historical
16 section of the major events in smoking history?

17 MR. ATKESON: Are we talking 1994 now
18 or when?

19 MR. WITHEY: 1989.

01:44:56 20 A. I have read that in the past.

21 Q. You know Ken Warner?

22 A. I've never met him.

23 Q. You've read his work?

24 A. Yes, I've read some of his work.

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1:45:24 1 Q. And you, I think in your book and maybe
2 in some of the other articles, you include a
3 consumption curve for per-capita consumption of
4 cigarettes in the United States, do you not?

01:45:16 5 A. That's correct.

6 Q. And do you recall where you got that
7 information from?

8 A. I made it up myself. I didn't lift it
9 from anyplace.

1:45:44 10 Q. Have you compared what you've described
11 to what's in the Surgeon General's report in
12 Chapter 8?

13 A. Did I take my curve and compare it to his
14 curve? No, because I know my curve is right, so
1:45:56 15 there's no reason to compare it.

16 MR. WITHEY: Let me just have this
17 marked.

18 (Viscusi Deposition Exhibit 8 marked
19 for identification.)

1:46:28 20 BY MR. WITHEY:

21 Q. Hand you what's been marked Exhibit 8.
22 This is a diagram, Figure 3 from Chapter 8 of the
23 1989 Surgeon General's report. Have you seen that
24 before?

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01:46:40 1 A. I believe so, yes. I see the report.

2 Q. And it is from Ken Warner's study in
3 1985. You see that source cited?

4 A. Yes.

01:46:48 5 Q. Have you read the underlying study?

6 A. I don't recall.

7 Q. Well, the Surgeon General in this chapter
8 relates key historical events to rises or falls in
9 consumption. Is that your understanding?

1:47:04 10 A. Yes.

11 Q. Have you yourself performed a similar
12 analysis historically?

13 A. I have a similar curve except I also do
14 the tar-adjusted cigarette consumption.

1:47:16 15 Q. No, I'm asking a little bit different
16 question. I know you have a curve, but you have
17 not in your curve that I've seen in any of your
18 published works related the curve to specific
19 historical events, at least in the chart that is
20 presented.

01:47:28 21 A. Right. I've never done a curve with
22 these arrows but I've done statistical analyses to
23 control for price and other factors.

24 Q. And you agree, do you not, that after the

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01:47:44 1 release of the 1964 Surgeon General's report, for
2 the next ten or fifteen years there was, with some
3 bumps and adjustments, there has been a decline in
4 smoking consumption?

01:47:52 5 A. Certainly.

6 Q. Do you believe that the publication of
7 the Surgeon General's report in 1964 contributed to
8 that decline?

9 A. The exact cause is unclear because so
01:48:06 10 many things happened almost contemporaneously. We
11 had the Surgeon General's report, we had on-product
12 cigarette warning labels, then the broadcast ban.
13 There's also no controls here for price or for age
14 structure in the population. But there's no
01:48:26 15 question that the informational environment change
16 did have an effect.

17 Q. Had a negative effect on consumption?

18 A. Yes.

19 Q. And so would you agree with the general
01:48:34 20 proposition that the American consuming public is
21 responsive to information about health risks of
22 smoking?

23 A. They have responded here. And if you
24 look at the tar-adjusted cigarette consumption,

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01:48:50 1 that decline began even earlier and you don't get
2 this sort of turnaround here. It actually occurred
3 long before this.

01:49:00 4 Q. So you agree with the general proposition
5 but would also add that this occurred even earlier
6 than 1964 as it relates to the tar wars or whatever
7 you want to call it?

1:49:12 8 A. Even before that. It's in one of my
9 exhibits. It occurred long before this is when you
10 had the shift.

11 Q. Do you understand that one of the reasons
12 for the decline in smoking as a result of the
13 Fairness Doctrine was the fact that antismoking ads
14 were placed on television at that time?

1:49:28 15 A. We don't know that because there's so
16 many contemporaneous things. That's never been
17 nailed down.

18 Q. But actually the Surgeon General
19 concludes that that was a cause. Correct?

1:49:36 20 A. He can conclude whatever he wants. I'm
21 talking about what you can statistically say based
22 on valid scientific studies.

23 Q. They have actually done multiple
24 regression analyses of some of these historical

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11:49:44 1 events, have they not?

2 A. Yes, and they have shown mixed results.
3 Some people say, depending on what you control for,
4 that the Fairness Doctrine had an effect and other
11:49:52 5 people say it did not.

6 Q. Do you believe that the time period in
7 which antismoking advertisements were on TV along
8 side by side with smoking advertisements by the
9 tobacco industry increased the information transfer
1:50:06 10 in a way that could affect risk perception?

11 A. I'm not sure it provided new information,
12 but I don't know exactly what they said in the
13 antismoking ads that was new.

14 Q. You've not studied that then. Correct?

1:50:16 15 A. I was alive during that time period and
16 I would have seen the ads.

17 Q. Well, do you recall any of them?

18 A. I don't recall them, so they didn't make
19 a big impact on me.

1:50:24 20 Q. Whether you were alive or not, I'm asking
21 you as an expert whether you've studied the topic.
22 And if you haven't studied it, that's fine. You
23 have not gone back, looked at the ads, compared the
24 ads to consumption rates, looked at what the TV ads

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1:50:38 1 for the cigarette manufacturers were, and tried to
2 determine what effect that may have had on the risk
3 perceptions. Fair enough?

1:50:46 4 A. I don't know anybody that's done that,
5 including Ken Warner.

6 Q. And you haven't done it. Correct?
7 That's all I'm asking you.

8 A. Correct. I don't think anybody's gone
9 back and done that.

1:50:56 10 Q. Now, you notice when -- The ban on
11 television ads occurred in 1971. Is that your
12 understanding?

13 A. Somewhere around there. Looks about
14 there.

1:51:04 15 Q. And you understand that the consumption
16 then went up after that. Correct?

17 A. That's correct.

18 Q. And the ban on advertising thus ended the
19 antismoking advertisements as well. Correct?

1:51:16 20 A. I don't know.

21 Q. Now, you agree that marketing cigarettes
22 to underage children, that is, people under the age
23 of 18, raises ethical questions. Fair enough?

24 A. Not if it's legal. It depends on what

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01:52:30 1 time period we're talking about.

2 Q. Well, when was it legal to sell tobacco
3 products to children, if at all?

01:52:44 4 A. Well, you have to define what we mean by
5 a child. So if a 17-year-old is a child, when
6 I was in high school in Kentucky you could buy
7 cigarettes legally.

8 Q. So if it was illegal in any state, then
9 it would be unethical or potentially illegal then
10 to market to kids or underage. Correct? In other
11 words, it depends upon whether it's legal or
12 illegal, in your judgment?

13 A. I'm not an ethicist. All I'm saying is
14 that what's legal and what's not legal should
15 presumably affect the answer to this question.

1:53:10 16 Q. Let me ask you this: Would you disagree
17 with the statement that it is immoral, unethical
18 and illegal to market cigarettes to children?

19 A. I'm not a religion expert or an ethicist
20 or a lawyer, which are the three disciplines which
21 you'd want to make such judgments. And you've also
22 not defined what you mean by children.

23 Q. Underage; under 18.

24 A. Six-year-olds are different than 17-year-

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1 olds.

2 Q. Whether it's legal or not? Strike that.
3 What could the tobacco industry -- What are the
4 methods the tobacco industry could have undertaken
5 to minimize the sale or consumption of cigarettes
6 by underage persons? What is the range of policy
7 options that the tobacco industry had?

8 A. I don't think that's their
9 responsibility. I think that's the enforcement
10 responsibility of the government, because that's
11 not a brand-specific problem.

12 Q. But I didn't ask you whether it was their
13 responsibility. I'm asking you the potential
14 measures that the tobacco industry could take or
15 could have taken to minimize the sale or
16 consumption of cigarettes by persons that are
17 underage.

18 A. Once again, I don't think that that's a
19 private-company responsibility or something that
20 they should do. I think that's something the
21 government should do.

22 Q. I didn't ask whether they were
23 responsible for doing it. I'm saying what was the
24 range of potential efforts they could have

W. Kip Viscusi, Ph.D.

01:54:46 1 undertaken if they had so chosen?

2 A. I'm saying there's nothing --

3 MR. ATKESON: Asked and answered.

4 A. There's nothing economically efficient
01:54:52 5 that they should do or can do.

6 Q. Could the tobacco industry enforce the
7 prohibition on sales of their product through
8 vending machines?

9 A. No, because that's a decentralized
01:55:04 10 behavior over which they have no control. This is
11 all determined by who operates the vending machine.

12 A. Well, if the tobacco industry marketers
13 and people who sell to the distributors who sell to
14 the convenience stores say we'll not sell, we'll
01:55:20 15 not provide you our product if you put them in
16 vending machines, was that a possible policy the
17 tobacco industry could have had?

18 A. I don't see what's wrong with selling
19 them in vending machines. So it would be up to the
01:55:34 20 retailer or whoever monitors the vending machine to
21 ensure that they were not purchased by underage
22 smokers if there was an age restriction in that
23 state.

24 MR. WITHEY: You want to read him my

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01:55:42 1 question back? Well, I'll rephrase it.

2 BY MR. WITHEY:

3 Q. My question isn't whether it was wrong or
4 right. My question is simply: Could the tobacco
01:55:52 5 industry, if it wanted to, through its distributors
6 have said we prohibit the sale of our cigarettes
7 through vending machines and if you place them in
8 vending machines, then we will withdraw our product
9 from your outlet?

1:56:06 10 A. I don't know if they have that authority
11 to monitor how a product is used downstream.

12 Q. The chemical industry monitors how their
13 product is used downstream, do they not?

14 A. Typically they send the product on with
1:56:24 15 material safety data sheets, but they don't go
16 in-plant to monitor how a chemical is used, no.

17 Q. You're sure about that?

18 A. Not all of them do. I don't know if any
19 of them do.

1:56:34 20 Q. In fact, the Chemical Manufacturers
21 Association of this country has as a requirement of
22 membership in the association that each of the
23 members use what's called a product stewardship
24 program. Are you familiar with that?

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01:56:46

1

A. No.

2

Q. Lacking familiarity with that policy,

3

I won't ask you further. But I would suggest that

4

the tobacco industry certainly had through its

01:57:04

5

distributors, certainly had the ability, did they

6

not, to monitor how their products were sold in the

7

various convenience stores or other outlets?

8

I don't know what their legal authority

9

is.

01:57:16

10

Q. Well, I'm not talking about their legal

11

authority, I'm talking about their marketing

12

policies. They could have said, could they not,

13

that we are going to observe how our products are

14

sold and ensure as best possible that cigarette

1:57:32

15

sales to minors are not effectuated. They could

16

have done that. Correct?

17

A. I don't know that they didn't do that.

18

Q. So assuming that they did it, then they

19

could have done it. Correct?

1:57:44

20

A. All you're saying is they could have told

21

distributors we don't want our products sold to

22

minors --

23

Q. And enforce that.

24

A. I'm not sure what enforcement mechanisms

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1:57:54 1 they have. Do they have the right to enter
2 premises and inspect who's buying their cigarettes?
3 These are legal questions. I don't know the answer
4 to them.

1:58:02 5 Q. Don't they have the right to look and see
6 if their ads are properly displayed in a
7 convenience store?

8 A. I don't know what they do, so I don't
9 know what the companies themselves do.

1:58:16 10 Q. So you don't know that they couldn't
11 then. Fair enough?

12 A. Exactly. I don't know.

13 Q. Do you know if the tobacco industry could
14 have mandated as part of their marketing program
1:58:28 15 that no advertisement of our product could be
16 visible within let's say, you know, 2,000 yards of
17 any public school or private school?

18 A. I don't know what they could do.

19 Q. Could the tobacco industry have supported
2:58:41 20 bans on smoking in schools or educational
21 facilities? Is that a policy option they had?

22 A. Yes, they could do that.

23 Q. Could they have submitted -- Could the
24 tobacco industry have submitted to FDA jurisdiction

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01:58:56 1 over their product in order to develop such things
2 as safer cigarettes?

3 MR. ATKESON: Objection, calls for a
4 legal conclusion.

01:59:02 5 MR. WITHEY: I'm asking as a policy
6 option.

7 A. I don't know what the jurisdiction of the
8 FDA is and whether a company can say "Please
9 include us within your jurisdiction."

01:59:14 10 Q. Do you understand the tobacco industry
11 has fought any assertion of FDA jurisdiction over
12 the quality and content of their product?

13 A. That's recently.

14 Q. Well, have they ever submitted to FDA
01:59:24 15 jurisdiction or have they always opposed it?

16 A. Well, I've never been aware that the FDA
17 has tried to regulate cigarettes as a drug until
18 recently.

19 Q. Now, the cigarette manufacturers
01:59:44 20 certainly had an option to publish in the
21 literature and in the press and in advertisements
22 or in public statements that nicotine is addictive.
23 They had that policy option. Correct?

24 A. If in fact that were true, they could do

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W. Kip Viscusi, Ph.D.

1:59:56 1 that.

2 Q. Well, it is true, is it not?

3 A. Well, the Surgeon General formerly said
4 that cigarettes were habituating, not addictive.

02:00:06 5 Q. What did the tobacco industry say about
6 it in their internal documents?

7 A. I don't know what they said.

8 Q. Are you interested in it?

9 A. No, because I don't -- I'm not a medical
10 doctor so I don't know even the reference point
11 that they meant when they said addiction or
12 habituating.

13 Q. Doesn't the word addiction generally
14 carry a negative connotation?

2:00:24 15 A. So does habituate. They both are
16 negative.

17 Q. So did the tobacco industry, to your
18 knowledge, ever once except for Liggett more
19 recently or is about to ever publish in any warning
20 or any newspaper or any publication the fact that
21 their product was addictive, to your knowledge?

22 A. I don't know what they've done.

23 Q. And I take it because you don't know what
24 they've done, you don't know whether the consuming

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02:01:00 1 public was informed by the tobacco industry that
2 their product was in fact addictive. Fair enough?

3 A. That's correct.

02:01:12 4 Q. And would you agree that the extent to
5 which the industry itself, the tobacco
6 manufacturers, had scientists and their researchers
7 telling them that tobacco, the nicotine in tobacco
8 was addictive, that that was a piece of information
9 that you believe let's say going back to the '60s,
10 1963 for instance, that was a piece of information
11 that you believe could have been conveyed to their
12 customers if they believed that to be true?

02:01:32 13 A. I'm not sure what information is in those
14 studies as opposed to what the Surgeon General had
15 already gone public with.

02:01:46 16 Q. No. I'm asking if they believed that
17 nicotine was addictive in their own reports, in
18 their own studies in the 1960s, that was
19 information they could have conveyed to the public.
20 Correct?

21 A. But if the Surgeon General has already
22 said it's habituating, I don't know that those
23 studies tell us anything different.

24 Q. I didn't ask whether they tell you

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2:02:06 1 anything different. I'm saying, could they have
2 conveyed that to the public?

3 A. They can say whatever they want to the
4 public.

2:02:14 5 Q. All right. And do you believe that it
6 would be inappropriate from the risk perception
7 analysis for a company to say "Our product is not
8 addictive" when they in fact had concluded that
9 their product was addictive? Would that be not a
2:02:30 10 good thing from the risk perception standpoint?

11 A. I don't know whether they knew anything
12 that the Surgeon General hadn't already
13 disseminated and I don't know whether their
14 internal studies as you describe them relate to
2:02:40 15 addiction in a way that's different than what the
16 Surgeon General concluded with respect to
17 habituation.

18 Q. So you're saying as I understand your
19 testimony that if an industry, let's say in this
2:03:06 20 case Brown & Williamson, that their scientists and
21 their people in charge of this question of
22 addiction determined after their research that
23 nicotine is addictive and that the cigarette
24 manufacturers are in the business of selling

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2:03:24 1 nicotine, an addictive drug, that it's okay for
2 that industry at the same time to turn around and
3 tell the consumers "Our product is not addictive"
4 because of something that may have appeared in some
02:03:34 5 Surgeon General's report. Is that correct?

6 A. All I'm saying is that I don't know what
7 their internal standard for addiction is and how it
8 relates to the Surgeon General's definition of
9 habituation, so you'd want to know that answer
10 first. And you'd also want to know why you'd want
11 to contradict the Surgeon General. Do your
12 scientists really know more than the Surgeon
13 General if in fact you have the same definition?

14 Q. But I guess the answer to the question
2:04:00 15 is, it's okay to say the opposite of what they have
16 concluded privately in certain circumstances then.
17 Correct?

18 MR. ATKESON: Misstates his
19 testimony.

2:04:06 20 BY MR. WITHEY:

21 Q. If it does misstate your testimony, if
22 counsel is right, then I'd like you to answer this
23 question. If their main researcher, Brown &
24 Williamson, said nicotine is an addictive --

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12:04:18

1

MR. ATKESON: Counsel, let me just

2

stop you here. If you can take the tone out of

3

your voice, we can all hear you in this room;

4

there's no reason to get louder.

02:04:24

5

BY MR. WITHEY:

6

Q. If their own researchers at Brown &

7

Williamson say nicotine is addictive, we are in the

8

business of selling nicotine, an addictive drug,

9

and they have concluded that by whatever definition

12:04:44

10

they apply, do you have the view that it's okay for

11

a member of that company, the CEO of that company,

12

to state publicly including under oath that "Our

13

product is not addictive"? Could you answer that

14

question?

2:04:54

15

A. I think I have.

16

Q. From the standpoint of risk perception,

17

from the standpoint of transfer of information to

18

the public.

19

A. We do not know that the internal

2:05:06

20

scientists were using a definition of addiction

21

that corresponded to the Surgeon General's later

22

definition of addiction. We don't know that this

23

is not the same thing as the habituation

24

designation that the Surgeon General himself came

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12:05:20 1 up with. And we also don't know if this scientific
2 evidence developed internally is stronger than what
3 the Surgeon General has in making the designation
4 of habituation. So I don't know that there's any
02:05:32 5 reason to contradict what the Surgeon General
6 concluded.

7 Q. What impact, if you could say -- Well,
8 I'm just asking a question from the standpoint of
9 the transfer of information. You would agree that
^2:05:42 10 companies have responsibilities to transfer
11 information beyond that that's contained in a
12 warning label. Fair enough?

13 MR. ATKESON: Objection, calls for a
14 legal conclusion.

2:05:54 15 BY MR. WITHEY:

16 Q. Is that correct?

17 A. That's a legal issue also. Depends on
18 what the information is.

19 Q. Isn't it true that warnings don't relieve
2:06:02 20 the tobacco industry companies of communicating
21 risk in other ways or designing safer products by
22 submitting to government regulation, including FDA
23 regulation?

24 MR. ATKESON: Same objection.

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W. Kip Viscusi, Ph.D.

02:06:18 1 A. They still have to fulfill regulatory
2 requirements to the best of my knowledge. All
3 legal requirements still have to be met.

02:06:28 4 Q. Let me ask you this then. If the
5 definition of addiction in the industry's
6 vocabulary from their internal documents is the
7 same definition of addiction as eventually reached
8 by the Surgeon General in 1988, yet the industry,
9 in the case Brown & Williamson, concluded that it
10 was addictive in 1963, is it good for information
11 transfer and risk perception for the company
12 officially to state "Our product is not addictive"?

2:06:46 13 A. I would like to see the document itself
14 because I would like to see the nuances in terms of
15 how it was worded. I would like to see their
16 definition of addiction. So I would like to see
17 all these things you're claiming.

18 Q. So without seeing that, given the
19 hypothetical I'm asking you, you can't say it would
20 be inappropriate for an industry official to say
21 our product is not addictive if their own
22 scientists say it is addictive. Correct?

2:07:12 23 A. For the reasons I've already indicated
24 several times.

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W. Kip Viscusi, Ph.D.

12:07:22 1 Q. You cannot say that would be
2 inappropriate?

3 A. I think your question has been asked and
4 answered at least three or four different times.

02:07:28 5 Q. No. You've given reasons; you haven't
6 answered the question whether it would be
7 appropriate or inappropriate.

8 A. I think there's nothing inappropriate
9 because of the various reasons I've stated in the
10 three or four previous answers.

11 Q. Let me ask you a question about a
12 scientist from Philip Morris in 1969, again before
13 the 1988 Surgeon General's report, used the word
14 addiction, "Do we really want to tout cigarette
15 smoke as a drug? It is, of course, but there are
16 dangerous FDA implications to having such
17 conceptualizations go beyond these walls." Okay?
18 And this was by William Dunn, a scientist from
19 Philip Morris. Do you see any problems from the
20 standpoint of information transfer of risk
21 perception to that position?

22 A. I don't see any studies or original
23 knowledge there that he's conveying as opposed to
24 his own opinion as to how he'd want to designate

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W. Kip Viscusi, Ph.D.

2:08:32 1 cigarettes.

2 Q. And let me ask you to assume that in 1962
3 there was a confidential memo written by British
4 American Tobacco saying, quote, "We now possess
5 knowledge of the effects of nicotine far more
6 extensive than exists in published scientific
7 literature. It is well-known that the craving for
8 nicotine in a confirmed smoker who stops smoking
9 persists for ten, twenty or thirty days, and we
10 believe that we have found possible reasons for
11 addiction. Furthermore, smoking is a habit of
12 addiction. Nicotine is a very fine drug." Would
13 that statement, that we possess the knowledge of
14 the effects of nicotine far more extensive than
15 exists in published scientific literature, show
16 that the industry, in this case B.A.T., may have
17 knowledge beyond that which is available in the
18 scientific literature about the addictive quality
19 of their product?

2:09:22 15
2:09:36 20 A. I'm not sure of the context of this
21 quote. As I recall, this or a similar quote is
22 based on a national tour of researchers as opposed
23 to internal company documents, and that this
24 information would have been just as available to

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02:09:50 1 the government as it was to the tobacco industry.
2 So I don't think there's anything in terms of
3 private information there, so I'd want to see the
4 exact document.

02:10:00 5 Q. Well, you knew something about this
6 document, about a tour then, or are you just
7 guessing?

02:10:08 8 A. No, I went through this in another
9 deposition in the state of Minnesota and this is
10 reminiscent of that. So because of that, I would
11 like to see the document, you know, the original
12 document, if you have it.

13 Q. Have you asked counsel for it?

14 A. No. I mean, if you're citing it, I would
15 like to see what it is you're citing.

2:10:16 16 Q. Well, it was cited in another deposition
17 I thought you said.

18 A. Not by our side.

19 Q. No, by the other side.

20 A. Yes.

21 Q. So were you curious about it and wanted
22 to find out, "Well, gee, wonder where that came
23 from"?

24 A. No, I read the whole thing then. It was

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02:10:32 1 handed to me, I read it, I handed it back. But
2 I didn't collect it as a souvenir.

3 Q. No. But did you then ask counsel, "Well,
4 gee, can you provide me the surrounding documents
02:10:40 5 that help put this into in context?" You could
6 have asked him that, right?

7 A. I don't know if there were surrounding
8 documents because I read the whole document.

9 Q. Did you ask him to provide those
02:10:46 10 documents?

11 A. No. I had no reason to collect these
12 things after having already read it.

13 Q. You could have, though. Correct?

14 A. Sure.

02:10:54 15 Q. Because it might be evidence, at least
16 from the statement that I just read you, that the
17 industry had knowledge that was superior to that
18 existing in the published scientific literature.
19 Fair enough?

02:11:06 20 A. Well, the document I had indicated that
21 the knowledge could have been gathered by anybody
22 and that these weren't internal tobacco industry
23 studies.

24 MR. WITHEY: We're going to have to

W. Kip Viscusi, Ph.D.

02:11:16 1 go on a break to change tapes.

2 THE VIDEOGRAPHER: This marks the end
3 of tape number 2 in the deposition of W. Kip
4 Viscusi. Going off the record. The time is 2:11.

02:11:42 5 (Short recess taken.)

6 THE VIDEOGRAPHER: This begins tape
7 number 3 of the deposition of W. Kip Viscusi.
8 Going on the record. Time is 2:18.

9 BY MR. WETHEY:

2:18:18 10 Q. Sir, we were asking you questions about
11 what the tobacco industry could have done in order
12 to minimize sales and consumption of cigarettes to
13 underage persons, and let me just continue asking
14 you about whether the tobacco industry -- and I'm
2:18:36 15 not interested in your judgment about whether they
16 had reasons for doing it or not doing it; I'm just
17 asking whether they could have done the following.
18 Could they have funded antismoking campaigns aimed
19 at underage children?

2:18:48 20 A. Yes.

21 Q. And you would agree that public education
22 is an important information transfer that affects
23 risk perceptions generally. Correct?

24 A. Only if you're telling people things that

W. Rip Viscusi, Ph.D.

2:19:06 1 they didn't already know about the risks, in a
2 convincing manner, from a credible source.

3 Q. Do you have any data that would indicate
4 how many people under the age of 18 years old ever
2:19:18 5 read a Surgeon General's report?

6 A. No, I don't have that data.

7 Q. What is the average age of smoking in
8 this country? Do you know?

9 A. No.

2:19:24 10 Q. Do you know the average age that someone
11 starts smoking?

12 A. It depends on how you define starts
13 smoking. It varies depending on the survey.

14 Q. Would you agree that a high percentage of
2:19:36 15 the people who presently smoke first started
16 smoking when they were underage?

17 A. A very high percentage had their first
18 cigarette when they were underage, but that's
19 different from starting smoking on a regular basis
2:19:50 20 such as a pack a day.

21 Q. Well, what percentage of the current
22 smokers started smoking on a regular basis prior to
23 age 18?

24 A. I don't recall the exact percentage but

W. Kip Viscusi, Ph.D.

02:20:04 1 it's much lower than the percentage of people who
2 had one cigarette before the age of 18.

3 Q. Could it be as much as 50/50, 50 percent?

02:20:12 4 A. I'm not going to guess about the
5 statistics, as these can be well-known by just
6 finding the correct survey.

7 Q. Have you seen any survey by one
8 Dr. Shepelman?

9 A. You'll have to show me. I don't know.

02:20:26 10 Q. He has been designated as an expert
11 witness in, I think it's in this case, by the
12 defendants.

13 MR. ATKESON: Counsel, I've provided
14 you with no reports of any experts on either side
02:20:44 15 of this case.

16 MR. WITHEY: Well, I can. Let's go
17 ahead and have this marked.

18 (Viscusi Deposition Exhibit 9 marked
19 for identification.)

02:21:04 20 BY MR. WITHEY:

21 Q. Handing you what's been marked as Exhibit
22 9 for your deposition, I can represent that this is
23 a chart presented to us by a Dr. Shepelman, who was
24 an expert witness in the Minnesota case and

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2:21:24 1 apparently one of our cases. I mean, excuse me,
2 this case in Ohio. And the sources are noted here
3 in the chart that I'm going to show you. Do you
4 have it in front of you?

2:21:38 5 A. No.

6 Q. Oh, I'm sorry. Let me hand you what's
7 been marked as Exhibit 9. Looking over the data
8 presented and particularly the sources, the Office
9 of Smoking and Health, do you have reason to doubt
2:21:58 10 the percentage of smokers 18 and over that is
11 contained in the first column of this chart?

12 A. This spans a long time period, so what
13 I would want to know is: Is the definition of what
14 is a smoker comparable over that time period?

2:22:16 15 Q. Okay. Assuming that it is, do you have
16 reason to believe that these numbers are accurate
17 just based on your training and research?

18 A. I have no reason to believe they're
19 accurate. I have no -- I don't know where they
2:22:28 20 came from. I don't know whether the samples were
21 the same every year. I know nothing about it.

22 Q. All right. Then let me ask you to assume
23 that 50 percent of the people who are presently
24 smoking started regularly smoking when they were

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02:22:44 1 minors. Okay?

2 A. 53 percent?

3 Q. 50, just for ease of discussion. Can you
4 assume that for the purpose of these questions?

02:22:52 5 A. All right.

6 Q. Do you have any studies or research that
7 would indicate what percentage of those 50 percent
8 who started smoking regularly under the age of 18
9 ever read a Surgeon General's report?

02:23:12 10 A. First, let me clarify the premise of
11 this, because what I have found -- and I didn't do
12 it for this case because I didn't think this was
13 about youth smoking, I thought it was about
14 unions -- is that there's a tremendous amount of
02:23:26 15 quitting behavior that also takes place before 18.
16 So that it's very rare indeed for somebody to be a
17 pack-a-day smoker before 18 and to be persistently
18 a pack-a-day smoker throughout your teenage,
19 underage smoking years. This is not a common
02:23:40 20 event.

21 Q. What is that based on?

22 A. This is based on analysis of government
23 surveys of cigarette smoking by age where they
24 actually report, you know, how much they've smoked,

W. Kip Viscusi, Ph.D.

2:23:52 1 whether you quit or not.

2 Q. Do you have a cite on any particular
3 study that you're referring to, Doctor?

4 A. I have used the CPS and a couple of other
2:24:02 5 surveys, government surveys, to crank out number of
6 cigarettes smoked by age, but not for this case.

7 Q. Well, you say you thought this case was
8 about unions. Do you understand that people in
9 health and welfare funds were kids once. Right?

2:24:14 10 A. That's true.

11 Q. And you understand that some percentage
12 of these people probably started smoking regularly
13 when they were kids. Right?

14 A. No, I think it's a very small percentage.

2:24:24 15 Q. Really?

16 A. Smoked regularly and did not quit smoking
17 before the age of 18. A lot of them start and
18 stop; a lot of them have an experimental cigarette.

19 Q. What's the basis of stating a very small
2:24:38 20 percentage? Do you have any study or data you
21 could rely upon you could cite to us?

22 A. That's not something I came here to
23 testify about because I didn't know that was going
24 to be an issue in the case.

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W. Kip Viscusi, Ph.D.

02:24:48 1 Q. You didn't know that risk perceptions for
2 children or underage smokers was going to be an
3 issue in the case?

02:25:06 4 A. Risk perceptions for 16- to 19-year-olds.
5 So risk perceptions is different than cigarette-
6 smoking behavior and quit rates among children. So
7 that I was not aware that that aspect was going to
8 be a focal point of the case.

02:25:18 9 Q. Well, if you don't have opinions, that's
10 what we're here to find out.

11 A. Oh, I have opinions. I do not have the
12 data with me. You know, if there's a rebuttal
13 witness that has evidence that I have to respond
14 to, I'll be happy to come up with the evidence.

02:25:34 15 Q. I'm just asking you, I mean, you don't
16 know what the percentage of people currently
17 smoking that began to smoke regularly under the age
18 of 18? You don't know that figure, correct?

19 A. I don't think anybody knows that figure.

02:25:50 20 Q. Okay. So that's never been studied then.
21 Correct?

22 A. No, there are studies that interview
23 people at a point in time, but I don't think
24 they're good studies that ask people today and do a

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W. Kip Viscusi, Ph.D.

2:26:02 1 retrospective longitudinal analysis of figuring out
2 what their smoking rates were when they were
3 underage. That kind of memory, that kind of recall
4 task I don't think has been undertaken. And if it
02:26:14 5 was, I'm not sure how many let's say 50-year-olds
6 remember exactly when they started smoking a pack
7 and a half a day continuously through the age of 18
8 and thereafter.

9 Q. Well, they might know whether they
2:26:26 10 started before the age 18 without knowing exact
11 years. Correct?

12 A. Starting smoking is different than
13 starting in a way that's a pack a day. So you can
14 have a cigarette, you can have a couple cigarettes,
2:26:38 15 you may have one riding home on the bus from
16 school. But that's different from being a smoker,
17 because the quit rate among those people is very,
18 very high.

19 Q. You keep using the term pack a day.
2:26:50 20 Someone who smokes half a pack a day throughout
21 high school is not a regular smoker?

22 A. I'm just taking a reference point. You
23 can define a regular smoker however you want and
24 then we'll look at the statistics. What I'm saying

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W. Kip Viscusi, Ph.D.

02:26:58 1 is that when you start talking about regular
2 smoker, you're the one who's asking the questions
3 and you're asking me to assume a regular smoker is
4 50 percent, and now you're saying with this
02:27:00 5 question that you don't know who a regular smoker
6 is. It's a half a pack a day, it's a full pack a
7 day. We're all over the map here. So I think you
8 have to define what you mean for me to answer any
9 of these questions.

02:27:20 10 Q. No, you're supposedly the expert on this
11 and I'm asking you: Have you seen any data that
12 suggests how many, what percentage of the current
13 smokers either started smoking, started smoking
14 regularly, started smoking a half a pack, started
02:27:34 15 smoking a pack a day? Do you have any data that
16 you could share with us or any information you
17 could share with us on that?

18 MR. ATKESON: Objection, asked and
19 answered and argumentative.

02:27:40 20 BY MR. WITHEY:

21 Q. Go ahead. And whatever criteria you
22 think is relevant.

23 A. No, as I've said, I have not memorized
24 the numbers. A very large percentage have had at

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W. Kip Viscusi, Ph.D.

2:27:50 1 least one cigarette when they were a minor, but
2 that's quite different from becoming a regular
3 smoker and being locked into cigarette smoking
4 without the ability to quit, because a lot of
2:28:00 5 people quit and there's a lot of turnover in that
6 group.

7 Q. Well, okay. What's the percentage of
8 turnover in the group of smokers underage?

9 A. I didn't memorize these statistics
2:28:12 10 because I didn't crank them out for this case.

11 Q. Do you know?

12 A. No. If I knew it, I would have memorized
13 it and remembered it.

14 Q. Do you have a general sense?

2:28:20 15 A. No. I'm not going to guess on the
16 statistics, but I've done this for another matter.

17 Q. What other matter?

18 A. Joe Camel.

19 Q. You were a witness in the Joe Camel case?

2:28:28 20 A. Yes.

21 Q. For who?

22 A. For Joe, for RJR. I forgot about it.

23 But, anyway, I did RJR.

24 Q. Let's go back then because I did ask you

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W. Kip Viscusi, Ph.D.

02:28:40 1 if you had consulted with the tobacco industry and
2 now you've got a new one. Okay? Who was your --

3 A. It's the first one I remember. First
4 time I remembered it.

02:28:48 5 Q. Who was it who contacted you on the Joe
6 Camel case?

7 A. Collier Shannon.

8 Q. And what does he work for?

9 A. It's the law firm, Collier Shannon.

10 2:28:56 Q. And who does he work for?

11 A. That firm works for RJR. But that's not
12 a legal case. That was --

13 Q. I don't care what it is. I'm just asking
14 you times you've consulted with the tobacco
15 industry.

2:29:06 16 A. Right.

17 Q. And when did that start?

18 A. It was this year. I may have started
19 last year.

20 2:29:14 Q. This year is '98, so it probably started
21 in '97 you think?

22 A. I don't know if I did any work in '97.
23 I may have met with him in '97 but almost all the
24 work was confined to '98.

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W. Kip Viscusi, Ph.D.

2:29:22 1

Q. What work did you do for him?

2

A. I was an expert witness.

3

Q. In a case?

4

A. In the matter before the FTC.

2:29:32 5

Q. What was the matter before the FTC?

6

A. Whether the FTC wanted to officially ban

7

Joe Camel and have the cigarette undertake an
advertising campaign, antismoking campaign.

8

9

Q. And you were hired to give expert

2:29:48 10

opinions to the FTC then?

11

A. Yes.

12

Q. What were your opinions?

13

A. That there is substantial risk awareness

14

among the population in terms of smoking risk
beliefs; and we've already talked about the
awareness of the habit and addiction issue.

2:30:04 15

16

17

Q. What about substantial risk awareness of

18

people between the ages of 12 and 17? Did you
prepare opinions on that for the FTC?

19

2:30:22 20

A. Well, to the extent that you can put in

21

the regression a variable with respect to age, you
know, the predicted value of the risk perceptions
if you leave that age group certainly are not going
to drop off, because risk perceptions actually

22

23

24

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W. Kip Viscusi, Ph.D.

02:30:42 1 increase to the extent that you go to a younger age
2 group. So that I did have that opinion with
3 respect to the litigation, so that would take us
4 outside of the survey range. But I wouldn't
02:30:52 5 extrapolate that back to, for example, two-year-
6 olds. So the closer you are to the 16-year-old
7 threshold, the more reliable it would be.

02:31:04 8 Q. Well, that wasn't a 16-year-old
9 threshold, that was a 16- to 21-year-old from the
10 1985 survey. Correct?

11 A. That's the band, yes. It includes
12 16-year-olds.

13 Q. Okay. But that is the only data? You
14 have not -- As I understand it, then, you have not
02:31:16 15 done any other -- Well, you have either not --
16 You did not cite to the FTC any other study or
17 survey of people within that age bracket, 12 to 17,
18 other than the 1985 and other than what you've
19 testified about the addiction studies. Correct?

2:31:34 20 A. No, I've looked at quit behavior as well
21 in that age group.

22 Q. All right.

23 A. So smoking and stopping smoking, in-and-
24 out behavior.

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W. Kip Viscusi, Ph.D.

2:31:42 1 Q. Did you prepare a document for the FTC or
2 for the lawyer?

3 A. We just prepared a general statement.
4 But the FTC dropped the case before I submitted my
02:31:52 5 written testimony, so I never prepared a document.

6 Because they dropped Joe Camel then.
7 Correct?

8 That's correct.

9 Now, going back to what kinds of things
2:32:00 10 the tobacco industry could have done to minimize
11 underage smoking, you agree that the industry in
12 conjunction with and supporting and cooperating
13 with government could have required photo
14 identification of anyone under the age of 21.

2:32:14 15 Correct?

16 MR. ATKESON: Counsel, let me just
17 question you in terms of clarifying these
18 questions. Are you just saying is it possible for
19 them to have done it?

2:32:22 20 MR. WITHEY: I'm just saying, yes,
21 was it a policy option they had.

22 BY MR. WITHEY:

23 Q. Was that a policy option?

24 A. I don't know whether that's legal.

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W. Kip Viscusi, Ph.D.

02:32:30 1 Q. In fact, that was part of the agreement,
2 was it not, the settlement agreement of June 20,
3 1997?

02:32:45 4 A. That the tobacco industry would require
5 people to have photo IDs?

6 Q. With the governmental authorities, yes;
7 in cooperation with the government.

8 Q. The government's doing this?

9 Q. No, the tobacco industry and the
10 government together are agreeing to this in a
11 cooperative fashion.

12 A. That's different than unilaterally having
13 the tobacco industry --

14 Q. I'm not asking you unilaterally. I'm
15 saying the tobacco industry --

16 A. Yes, that was your question.

17 Q. No, it wasn't.

18 A. That was your question.

19 MR. ATKESON: Guys, let's not get in
20 an argument.

21 BY MR. WITHEY:

22 Q. Let's just listen to the question. Okay?
23 The question was: The tobacco industry in
24 conjunction and cooperation with the government,

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W. Kip Viscusi, Ph.D.

2:33:12 1 the local, state, federal, or county government,
2 could have done the following things as a policy
3 option, could have supported doing this. One is
4 requiring photo identification on anyone underage
2:33:20 5 to purchase cigarettes?

6 A. You can ask the government to do that.
7 They could ask the government to do that. Doesn't
8 mean they would do it, but they could ask the
9 government to do it.

2:33:30 10 Q. Doesn't mean the government would do it
11 but they could have advocated that with the
12 government. Right?

13 A. They could.

14 Q. And they could have done that since 1953.
2:33:36 15 Correct?

16 A. There's no time barrier to doing it.

17 Q. They could have, again in conjunction
18 with the government, banned the sale of tobacco
19 products through vending machines. They could have
2:33:48 20 supported that, for the government to do that.

21 Correct?

22 A. They could have asked the government to
23 do that.

24 Q. They could have banned self-service

W. Kip Viscusi, Ph.D.

02:33:58 1 displays of tobacco product except in adult-only
2 facilities. Correct?

3 A. Assuming the government can define that,
4 yes, they could ask the government to do that.

02:34:14 5 Q. They could have requested that government
6 license retail tobacco product sellers and require
7 conformance with the terms of that license as a
8 condition for holding it and selling their
9 products.

02:34:26 10 A. They could request that.

11 Q. They could have requested imposing
12 penalties for violations of that license. Correct?

13 A. Yes.

14 Q. They could have decreased -- Okay.

02:34:42 15 Now, all of those things were things
16 that in fact the tobacco industry agreed to in
17 1997. Correct?

18 A. I don't know what they agreed to in '97.

19 Q. Did you write an article called Smoke And
02:34:58 20 Mirrors for The Brookings Review?

21 A. Right. But that agreement was
22 conditional upon it being adopted, so they didn't
23 agree to anything till '98. It's a new --

24 Q. I'm just asking you if you wrote the

W. Kip Viscusi, Ph.D.

2:35:08 1 article, Doctor.

2 A. Yes.

3 Q. I didn't ask you to justify it. I just
4 asked you, did you write this article and did you
2:35:14 5 cite on page 18 of that article "The proposed
6 legislation includes a wide variety of measures
7 targeted at reducing underage smoking"?

8 A. Yes.

9 Q. And you listed all of those as what the
2:35:24 10 agreement provided. Correct?

11 A. They only agreed if the other side
12 agreed and the agreement never went through.

13 Q. You're saying that the tobacco
14 industry -- Well, you would agree as a policy
2:35:38 15 option the tobacco industry could have done all of
16 those things, requested government to do all those
17 things from the time they started selling
18 cigarettes. Fair enough?

19 A. They could have done these unilaterally.

2:35:46 20 Q. But they didn't, did they?

21 A. No.

22 Q. They didn't do it till the proposed
23 agreement in 1997, which of course wasn't approved.
24 Right?

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W. Kip Viscusi, Ph.D.

02:35:54 1 A. Right. So they didn't eventually agree
2 to anything till '98.

02:36:00 3 Q. But of all the measures that I've
4 described, including the vending machines, the
5 licensing, the public education, antismoking public
6 education campaign, smoking bans in schools, the
7 tobacco industry didn't support any of those, did
8 they, until recently?

9 A. I don't know what they supported.

02:36:28 10 Q. Now, what percentage of people within the
11 ages again 12 till 17 do you believe have read
12 press releases of the Surgeon General or reports in
13 the newspaper of Surgeon General press releases?

14 A. I don't know.

02:36:50 15 Q. What percentage of children age 12, 13 or
16 14 do you believe have the maturity and judgment to
17 assess lifetime risks of smoking, including lung
18 cancer and other causes of death or illness?

02:37:08 19 A. I think even in that age group they're
20 aware that cigarette smoking has been linked to
21 cancer and that cigarettes are hazardous in a
22 variety of ways, which is what the surveys have
23 borne out.

24 MR. WITHEY: Do you want to read my

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W. Kip Viscusi, Ph.D.

02:37:16 1 question back so he can answer it.

2 MR. ATKESON: He did answer it,
3 counsel.

4 MR. WITHEY: We'll see.

02:37:20 5 MR. ATKESON: Well, he answered it.

6 MR. WITHEY: I said we'll see. Go
7 ahead.

8 MR. ATKESON: We don't have to see,
9 we just heard it.

2:37:26 10 MR. WITHEY: I'm going to have him
11 read the question back.

12 MR. ATKESON: And what is that going
13 to show?

14 MR. WITHEY: Go ahead.

2:37:46 15 (The reporter read the question.)

16 MR. ATKESON: Asked and answered.

17 BY MR. WITHEY:

18 Q. Could you answer that, please?

19 A. Read my answer, please.

2:38:06 20 (The reporter read the answer.)

21 BY MR. WITHEY:

22 Q. All of them are or some of them, or did
23 you express a percentage in answering that, sir?

24 (TELEPHONE RINGING)

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W. Kip Viscusi, Ph.D.

12:38:24 1 A. The surveys I cite in my book are
2 historical in nature so I would expect the numbers
3 have gone up, but the percentages are given there
4 in the book.

02:38:42 5 Q. On ages 12 to 14?

6 A. You can look up the ages. But it
7 includes people even younger than that, nine-year-
8 olds.

9 Q. Are you testifying that in your book
12:38:42 10 there is an answer to the question what percentage
11 of people, kids age 12 to 14, possess the judgment
12 and maturity to make a decision about lifetime
13 exposures to smoking including the health risks
14 attendant thereto? It's in your book, you're
15 saying?

12:38:56 16 A. What I'm saying -- Nobody's asked that
17 question. You don't --

18 Q. I'm asking you the question. Do you have
19 an answer to it?

12:39:04 20 MR. ATKESON: Would you let him
21 finish his answer?

22 A. Nobody's ever --

23 MR. WITHEY: If he answers it I have
24 no problem.

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W. Kip Viscusi, Ph.D.

2:39:10 1 THE WITNESS: You don't have the
2 right to interrupt me regardless.

3 MR. ATKESON: Whoa!

4 BY MR. WITHEY:

2:39:14 5 Q. Go ahead.

6 A. The point is that these questions ask
7 people about their awareness of various risks of
8 smoking and include age groups such as the ones
9 you've mentioned as well as younger people. Nobody
2:39:30 10 in these surveys has asked the question do you have
11 the maturity to make such judgments, so you don't
12 ask people those types of questions.

13 Q. That requires someone who has some
14 training in child or teenage or adolescent
2:39:46 15 psychology to assess what maturity levels people
16 reach at different times. Fair enough? It's not
17 something for an economist.

18 A. I don't think that's necessarily true.

19 Q. And is it your opinion that all of the
2:40:00 20 people age 12 to 14 have accurate risk perceptions
21 of smoking?

22 A. No. A lot of them may exaggerate the
23 risk perception; some may underestimate the risk.

24 Q. Have you made any effort to determine how

W. Kip Viscusi, Ph.D.

2:40:20 1 the information transfer process regarding smoking
2 differs between adults and people underage?

3 A. Well, the public information is out there
4 for everybody. We know the consequences of it by
02:40:38 5 age group from my surveys from age 16 on. We know
6 the results for age groups younger than that from
7 other surveys. So we're interested in the bottom
8 line as opposed to the mechanisms. I don't know
9 anybody who's looked at different mechanisms by age
^2:40:50 10 group

11 Q. Now, would you agree that there are a
12 number of different determinants of consumption
13 behavior of cigarettes?

14 A. Yes.

2:41:14 15 Q. And included within those are -- Well,
16 what are they?

17 A. Price.

18 Q. Okay.

19 A. Taste; how much you like cigarettes.
2:41:24 20 Risk beliefs will affect it. Those are the main
21 things.

22 Q. We've already talked about risk beliefs
23 or risk perceptions. You've indicated price.
24 There is an elasticity of demand for cigarettes

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W. Kip Viscusi, Ph.D.

12:41:40 1 depending upon age. Correct? As it relates to
2 price.

3 A. That's controversial. Some studies
4 indicate that there is such an elasticity. Other
02:41:58 5 studies, including recent studies, indicate that
6 there's no age-related difference.

7 Q. The Surgeon General's report in 1989
8 cited such differences, did they not?

9 A. I don't know. I'm aware of different
02:42:00 10 studies.

11 Q. You've cited those differences. Correct?
12 A. I have cited in my book I review some
13 studies, well, the Lewit Coate and Grossman study,
14 which indicates there is an effect. The Rand
2:42:14 15 Corporation study indicates there's no effect.
16 Since that time and since writing these articles
17 I've read other studies, some of which show no
18 effect. I've done estimations myself and haven't
19 found an effect.

2:42:26 20 Q. I'm talking about differential effect
21 between adults and children for price.

22 A. I am too.

23 Q. Okay. Just wanted to make sure.

24 Is it true that excise taxes do more

W. Kip Viscusi, Ph.D.

02:42:56 1 to reduce smoking propensities than the
2 underestimation of risk perceptions do?

3 A. Yes.

4 Q. What impact do excise taxes have --

02:43:14 5 A. Excuse me. Underestimation of risk
6 perception increases smoking; excise taxes decrease
7 smoking. So excise taxes decrease smoking by more
8 than the underestimation of risk increases smoking.

02:43:32 9 Q. Okay, correct. Do you believe that the
10 imposition of the federal excise taxes was a cause,
11 not the only cause, of further reduction of smoking
12 consumption in this country?

13 A. Higher price levels do decrease cigarette
14 consumption.

02:43:44 15 Q. And do they decrease cigarette
16 consumption to a greater extent amongst teenagers
17 than adults?

18 A. That's the debate. Nobody's indicated
19 that teenagers are less responsive than adults.
02:44:00 20 Some studies indicate that they're more responsive.
21 Some more recent studies indicate that there's no
22 difference.

23 Q. At least at the time of your deposition
24 in the Minnesota case, which would have been about,

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02:44:40 1 well, it would have been over a year ago, did you
2 at that time at least express the opinion that
3 excise taxes would decrease the consumption of
4 smoking more in teenagers than adults?

02:44:52 5 A. I don't know my opinion then, but I've
6 read other published studies since then that have
7 reinforced the studies indicating no difference.
8 So I'd say the jury's still out on this.

9 Q. Which study is that?

2:45:06 10 A. One example is the one by Govind
11 Hariharan that appeared in the Journal of Public
12 Economics. I believe Don Kenkel at Cornell
13 University also has a study showing the same thing.

2:45:32 14 Q. Now, is irrationality a determinant of
15 consumption behavior as it relates to smoking?

16 A. If you're irrational, that will affect
17 your behavior.

18 Q. Including whether to smoke or not.
19 Correct?

2:45:38 20 A. Sure.

21 Q. Now, let's assume that you believe that
22 the risk of dying from lung cancer or other
23 diseases out of a hundred people is that let's say
24 43 of them would die. Some of your studies and

W. Kip Viscusi, Ph.D.

02:46:24 1 surveys seem to indicate that that might be a mean
2 of some kind. Right? 43 percent.

3 A. That's what people think.

02:46:30 4 Q. Correct. Is it your testimony that
5 despite the fact that -- And that includes smokers
6 within that survey. Correct? Those surveys.

7 I break smokers out separately as well.
8 39 percent I think is their risk belief.

02:46:52 9 Q. All right, let's say 39 percent. Is it
10 your belief that smokers make an assessment that
11 even though their lifetime risk of dying from their
12 smoking cigarettes is 39 percent, that their
13 decision to smoke is still rational?

02:47:10 14 A. Yes. Because you don't die right now, so
15 none of us is immortal, it's just a question of
16 premature death.

02:47:20 17 Q. Don't you want to factor into that
18 judgment whether people believe they're going to
19 stop smoking and therefore not be subject to the
20 risk or less risk, let's put it, of dying?

21 A. We know that the implicit value of life
22 reflected in smokers' decisions is quite consistent
23 with other evidence on risk-taking behavior for
24 that group and other factors, so that all of this

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W. Kip Viscusi, Ph.D.

2:47:42 1 behavior seems to be internally consistent with
2 smokers making a rational decision.

3 Q. Well, I'm asking I think a little
4 different question, although I appreciate your
5 response. The question I have is whether you have
6 been able to factor into those surveys for the
7 smokers whether in addition to their acknowledgment
8 that they have a 39 percent chance of dying over
9 their lifetime from the product that they're using,
10 whether they also have the belief at the time that
11 they're going to stop smoking and therefore are not
12 subject to maybe as high a death mortality toll?
13 Have you looked at that issue in the context of
14 those surveys?

15 A. Well, as you'll recall, the wording of
16 the question was out of one hundred cigarette
17 smokers, so that you would assume the average
18 propensity to quit. You wouldn't assume that
19 they're going to stop smoking.

20 Q. I'm asking whether you've factored that
21 into any of the survey results that you've
22 reported, that question. If you're a smoker and
23 you think there's X percentage chance or thirty-
24 nine out of a hundred will die of it, whether that

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W. Kip Viscusi, Ph.D.

02:48:50 1 risk perception is in any way impacted or affected
2 by the smoker's perception themselves that that
3 would apply to them or that they would quit
4 smoking, either of those.

02:49:00 5 A. Well, I know that it applies to them
6 because I showed through the regression analysis
7 that the propensity to smoke was reduced by higher
8 risk beliefs, which is consistent with what you'd
9 expect. I don't have any explicit question there
02:49:18 10 relating to quit propensities and what was going
11 through the smoker's mind about his or her own quit
12 propensities.

13 Q. Is that something that could have been
14 asked?

2:49:34 15 A. You can ask anything, sure.

16 Q. You agree that the risk perception
17 results do not in and of themselves eliminate the
18 potential for irrational behavior amongst the
19 younger age groups under 18?

2:49:46 20 A. Or any age group.

21 Q. Correct?

22 A. That's correct.

23 Q. And in addition to judging the risk
24 perceptions, at least for the purpose of

W. Kip Viscusi, Ph.D.

2:50:00 1 determining the impact of tobacco industry behavior
2 and other causes of consumption of cigarettes, you
3 would want to show that a given group in whatever
4 the group category is, 16 to 21 or union workers,
2:50: 5 et cetera, act upon those perceptions in making
6 their smoking decisions. Correct?

7 A. Well, that would be a second form of test
8 of the rationality of smoking decisions.

9 You have not done that test here,
2:50:28 10 however, have you?

11 A. Yes.

12 Q. Have you linked smoking perceptions to
13 consumption behavior in this population?

14 A. Yes.

2:50:40 15 Q. In addition to the price, have you looked
16 at the price issue for this case and the impact of
17 price on consumption of the beneficiaries in this
18 case?

19 A. Which year's data?

2:50:58 20 Q. Well, you've not looked at the
21 beneficiary population in this particular case.
22 Correct?

23 MR. ATKESON: Are you talking about
24 unions? I mean, there's a disconnect here. He's

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W. Kip Viscusi, Ph.D.

02:51:08

1 talking about union members, right?

2

3

4

5

MR. WITHEY: No. I'm talking about the beneficiaries of the trust funds that are in the class in this case.

6

7

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02:51:22

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02:51:32

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02:51:42

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24

Q. You've not surveyed them, you've not asked them questions?

A. No.

Q. And in a general sense, taking the beneficiaries in this case out of the equation, in a general sense it is your testimony that risk perception has an influence on consumption behavior. Correct?

A. Yes.

Q. But it is not the sole determinant. Correct?

A. Yes, that's correct.

Q. And what I'm trying to do is analyze what other determinants in addition to risk perception. We've identified irrationality as a potential determinant. Correct?

A. Could affect things.

Q. Price could affect things?

A. Right.

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2:51:48

1

Q. How about patterns of bias?

2

A. That has to do with the irrationality of risk perception, presumably.

3

4

2:52:00

5

Q. How about consumer undeterability? Do you know what that concept is?

6

7

A. No. Sounds like a psychological concept of some sort.

8

9

2:52:12

10

Q. Well, the concept is that consumers who don't have to pay the costs of their medical treatment but rather they're paid by third parties may not see an immediate direct cost effect to them of continuing to smoke, whereas if they paid for their own medical benefits out of their own pocket they might have a financial incentive to not smoke.

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A. So you're asking them to internalize the financial costs?

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Q. I'm asking whether a determinant in their smoking consumption is the fact that those costs are externalized.

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A. As it is now, the cigarette excise taxes dwarf any medical costs associated with cigarettes, so we already have more of a financial deterrent than would be warranted by any medical cost associated with smoking.

W. Kip Viscusi, Ph.D.

02:52:46 1 Q. So you're saying they've already paid the
2 medical cost by paying the excise tax?

3 A. Yes.

02:52:52 4 Q. And so that's not a deterrent or it is a
5 deterrent?

6 A. Excise taxes reduce smoking.

7 Q. So it is a deterrent?

8 A. Yes.

02:53:02 9 Q. So you're saying consumer undeterability
10 is subsumed within the excise tax equation then?

11 A. This is your term. But I'm saying that
12 excise taxes decrease smoking and excise taxes
13 exceed the medical costs associated with smoking.

02:53:16 14 Q. Let's look at another determinant. When
15 you're talking about risk perception you not
16 only -- Strike that. When you're talking about
17 the determinants of consumption, you're not only
18 talking about what risk perceptions or
19 irrationality or excise tax leads people to first
02:53:28 20 start smoking but also their continued smoking.

21 Correct?

22 A. That's correct.

23 Q. What --

24 A. But I'm not the one who's talking about

W. Kip Viscusi, Ph.D.

12:53:32 1 the deterability of smoking. That's your
2 terminology.

3 Q. No, determinability I'm saying; what are
4 the determinants of.

5 A. Okay.

6 Q. I may have misspoke myself. I meant the
7 determinants of the consumption of cigarettes, not
8 deterrence.

9 A. Okay.

12:53:46 10 Q. And one of them, one of the things you
11 want to look at is not only what starts people
12 smoking but why they continue to consume
13 cigarettes. Correct?

14 A. These are good things to look at.

12:53:56 15 Q. And in any of the four or five surveys
16 you've looked at, have you looked at any
17 differences as to why people started to smoke or
18 versus why people continue to smoke?

19 A. No, these are cross-sectional surveys, so
12:54:12 20 you only pick up a slice of time.

21 Q. So it is relevant only to the time they
22 were asked the question, not necessarily relevant
23 to the time they started smoking. Correct?

24 A. Right.

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W. Kip Viscusi, Ph.D.

12:54:32 1 Q. Now, would you agree that because the
2 surveys show risk perception for a lifetime of
3 smoking, that smoking hazards are not immediate so
4 that the risk outcome is not immediately apparent?

12:54:46 5 A. No. I mean, people are aware of the
6 long-term risks, which are catastrophic, and
7 there's also immediate feedback regarding things
8 such as smoker's cough and phlegm in your throat or
9 whatever that people get as well. So there's no
12:55:00 10 evidence that people underestimate those risks.

11 Q. Let me read something you wrote and see
12 if you stand by it, Doctor. This is in an article
13 called Smoking And Other Risky Behaviors in the
14 Journal of Drug Issues in 1998, quote, "Although
12:55:12 15 smoking is by far the most risky personal activity
16 that most people might select, smoking hazards are
17 not immediate so that the risk outcome is not
18 immediately apparent." Do you agree with that
19 statement as I read it to you?

12:55:26 20 A. Well, the death risk, which is what I was
21 focusing on, is not an imminent acute death like
22 being run over by a car. There is a lag before you
23 have the death risk.

24 Q. So you agree? For that reason you agree

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2:55:40 1 with this statement then. Correct?

2 A. Right. Risks have different time
3 dimensions for smoking.

2:55:56 4 Q. Now, you agree that the question of
5 whether risk perceptions affect consumption may be
6 impacted by whether a particular product is or is
7 not addictive. Correct?

2:56:14 8 A. I'm not sure how that plays out because
9 there are all these models of rational addiction,
10 so risk perceptions presumably should still affect
11 consumption and they'll affect your initial
12 decision to become rationally addicted in the
13 rational addiction models.

2:56:30 14 Q. Do you have an understanding of how many
15 of the people that you surveyed in 1985 were
16 rationally addicted as opposed to irrationally
17 addicted?

2:56:40 18 A. No. But the people who do these
19 things -- I don't do the rational addiction models
20 myself -- claim that the empirical results are
21 consistent with rational addiction. But you can't
22 break out percentages like that because it's not on
23 an individual basis; it's on a societywide basis.

24 Q. Do you know what percentage of the people

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02:56:54 1 surveyed in your two hundred telephone survey in
2 1991 were rationally addicted as opposed to
3 irrationally addicted if they smoked?

02:57:06 4 A. Well, first of all, this is an economic
5 definition as to what rational addiction is that
6 I don't think anybody would have understood.
7 Secondly, asking people is not the way to find out
8 the answer. Third, this has been tested
9 empirically, which is what you want to do, and the
02:57:18 10 evidence is consistent with rational addiction.

11 Q. Well, rational addiction, how is that
12 defined?

13 A. In the rational addiction models you
14 anticipate that if you consume a product today
02:57:28 15 you'll want to consume more of it in the next
16 period, so the next period's consumption affects
17 this period's consumption. So that it goes beyond
18 a habit-formation model, which would just be last
19 period's consumption affects this period's
02:57:40 20 consumption.

21 Q. So, in other words, in order to answer
22 the role of addiction you would need a more
23 elaborate multi-period analysis then. Correct?

24 A. Addiction is by its very nature a

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2:57:58 1 multi-period type of thing.

2 Q. And have you yourself performed any
3 multi-period addiction analysis?

4 A. I've done some. They are not published.
2:58:12 5 But, you know, things I'm working on. Plus we have
6 these survey questions on knowledge of addiction,
7 which is different. Plus I have the material in
8 the book about quitting.

9 Q. Is there evidence in the literature that
2:58:28 10 learning that smoking -- evidence in the literature
11 indicating that smoking is riskier than one
12 initially thought?

13 A. I don't know of any.

14 Q. How about that quitting smoking is harder
2:58:46 15 than originally anticipated? Is there evidence in
16 the literature to support that?

17 A. No, I don't know of any literature there
18 either.

19 Q. Is there anything in the literature to
2:59:00 20 support the conclusion again as it relates to
21 smoking that the value of staying healthy was
22 greater than was once anticipated earlier?

23 A. I have no knowledge that that value
24 changes.

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W. Kip Viscusi, Ph.D.

02:59:12 1 Q. Do you have any knowledge that it doesn't
2 change?

02:59:22 3 A. Economists usually assume tastes are
4 tastes that people have so that there's no reason
5 to believe that they change.

02:59:36 6 Q. Have you stated that the purchase of
7 cigarettes is indistinguishable from the purchase
8 of automobiles or books? Would you agree with that
9 statement?

02:59:36 10 A. In what dimension? They are
11 indistinguishable in the sense that if the price
12 goes up you buy less.

02:59:50 13 Q. Any other way they're indistinguishable?

02:59:50 14 A. There are products, standard consumer
15 items that have similar long-run and short-run
16 demand elasticities, and I forget which products
17 they are. But if you're using it as a test of
18 addiction, the measures of short-run and long-run
19 price elasticities, there are comparable consumer
03:00:04 20 products. I'm not sure which ones fit that,
21 though.

22 Q. How about, I think it was in your book;
23 let me see if I can find the page. Yeah, in your
24 book on page, I think it's at page 109 under the

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W. Kip Viscusi, Ph.D.

3:00:58 1 caption Tastes, Addiction And Ethics, you state
2 "There are a variety of reasons why some people
3 choose to smoke whereas others do not. First, some
4 people may have a stronger preference for the
5 pleasures derived from smoking than others do.
6 Differences in taste influence the purchase of
7 almost all economic commodities, whether they be
8 cigarettes, automobiles or books."
9 A. True. And I still stand by that.
3:01:26 10 Q. Okay. As it relates to the determinants
11 of ongoing use of products, is there any difference
12 between cigarettes as an addictive substance and
13 books or automobiles, which of course are not
14 addictive?
3:01:42 15 A. That isn't what I said in the book.
16 Q. I know it isn't. I'm asking you a
17 different question.
18 A. I'm not conceding that cigarettes are
19 addictive since that's not -- that's medical
3:01:54 20 terminology as opposed to economics. But I will
21 say that cigarette smoking is hard to quit.
22 I would want to investigate the addictiveness of
23 these products as well. Automobiles, one can make
24 the same case, are also hard to quit even though

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W. Kip Viscusi, Ph.D.

03:02:16 1 you don't have physical withdrawal symptoms. You
2 know, to give up your car and have to take public
3 transit is something that people would find very
4 costly and hard to do. So if you're defining it in
03:02:28 5 terms of a change of a transportation mode, there
6 would be transaction costs associated with that.

7 Q. I thought you used the term addiction in
8 your work. Am I wrong about that?

9 A. To the extent that I do it's not -- it's
03:02:40 10 referring to a literature, not in terms of
11 something that I have independent knowledge of,
12 beyond that it's hard to quit. I sometimes use
13 addiction in relationship to the rational addiction
14 models developed by economists, but these are not
03:02:54 15 the same definitions that the Surgeon General gave
16 to addiction.

17 Q. So I take it, then, when you use the word
18 addiction in your work you define it as something
19 that's hard to quit. Is that correct?

03:03:22 20 A. Except the rational addiction models, it
21 goes farther than that, because that would just be
22 habit formation. But addiction also is anticipated
23 in the rational addiction models, anticipation of
24 future consumption and how that affects current

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03:03:34 1 consumption.

2 Q. I'm not conditioning the use of my word
3 "addiction" with the term "rational" in front of
4 it. I'm just asking you about the term addiction.
5 How would you define addiction itself in the ways
6 you've used it here?

7 A. Well, if addiction is just hard to quit,
8 then that would be a habit-formation model.

9 Q. Is that the way you define it then?

10 A. Well, I do both. I use it in both
11 contexts.

12 Q. Do you ever use it in the way the Surgeon
13 General used it to describe cigarettes?

14 A. I'm not sure that -- My definition would
15 overlap with addiction, habituation, his
16 definitions, so I'm not trying to do an exact
17 matchup with him or her. I don't know the economic
18 counterpart to what the Surgeon General said.

19 Q. So in your definition are automobiles as
20 hard to quit as cigarette smoking?

21 A. I'm not sure what you mean by hard to
22 quit. I don't think you get the physical
23 withdrawal symptoms from giving up your car, but
24 there are other transaction costs. If I live in a

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13:04:40 1 rural area 50 miles from the city and I have to
2 walk 50 miles let's say to get my groceries, then
3 that may be much harder for me to do than giving up
4 cigarettes.

03:04:48 5 Q. Well, even using your definition, though,
6 I assume that the fact cigarettes are hard to quit
7 then is a determinant of consumption of cigarettes.
8 Fair enough?

9 A. It could affect your continuation of
13:05:00 10 consumption and could affect whether you start
11 consuming cigarettes, yes.

12 Q. And have you made an effort to determine
13 of the various determinants of consumption that
14 you've testified to, risk perception,
13:05:14 15 irrationality, price, hard to quit, to use your
16 term, which of those -- Have you made any attempts
17 to quantify the role that each of those
18 determinants played in the consumption of
19 cigarettes in this country over time?

13:05:36 20 A. Well, I've done price versus risk in the
21 book.

22 Q. Right.

23 A. But I've not done the hard-to-quit aspect
24 in that book.

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03:05:44

1 Q. And you have no opinions on that as you
2 sit here today, correct, that you're going to offer
3 in this case?

4 A. In terms of quantifying it?

5 Q. Yes.

6 A. No.

03:06:08

7 Q. Do you believe that there's any action of
8 the tobacco industry in this country since 1953
9 that you believe either increased or decreased the
10 consumption of cigarettes or do you believe it had
11 absolutely no effect?

12 A. Raising the prices, which they
13 periodically do, would decrease cigarette
14 consumption.

03:06:16

15 Q. Anything else?

16 A. Marketing efforts in terms of discounting
17 your product, which decreases the effect of price,
18 would increase consumption.

19 Q. Anything else?

03:06:32

20 A. Those are the main things in terms of
21 total cigarette sales as opposed to sales of
22 particular brands and market shares.

23 Q. So do you believe that anything that --
24 Can you attribute anything that the tobacco

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13:06:50 1 industry did that in addition to increasing their
2 sales of their own product actually increased the
3 sales of cigarettes generally?

4 A. I can't think of anything.

03:06:50 5 Q. Do you understand that the tobacco
6 industry grouped into trade associations, Tobacco
7 Institute, Tobacco Industry Research Council, the
8 Council for Tobacco Research?

9 A. I know there are trade associations.

13:07:10 10 Q. Do you understand that the members of
11 those trade associations funded the efforts of
12 those organizations to accomplish the purposes for
13 which they are established?

14 A. Whatever they might be. I don't know
15 what they are in all cases. I know --

16 Q. I'm sorry.

17 A. I know what The Tobacco Institute does in
18 some cases.

19 Q. Right. You have cited Tobacco Institute
20 studies, have you not?

21 A. I have cited their data. I wouldn't
22 glorify them by calling them studies. They are
23 just lists of numbers, price numbers and excise tax
24 numbers by year.

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W. Kip Viscusi, Ph.D.

03:07:42 1 Q. And you understood The Tobacco Institute
2 was a public relations organization. Correct?

03:07:58 3 A. I know they do some of that. But I only
4 use their raw data, as do all the researchers,
5 including those who contribute to the Surgeon
6 General's reports.

03:08:08 7 Q. Have you examined the issue over time of
8 whether The Tobacco Institute's activities
9 increased the consumption of cigarettes in this
10 country by increasing demand, even if
11 incrementally?

12 A. I don't know what they've done to
13 increase demand.

14 Q. You haven't looked at that topic, though.
15 Correct?

16 A. It's never come to my attention that
17 there was such an effect so there's nothing that
18 got my attention to look at.

19 Q. Well, have you determined whether any of
20 the publications, press announcements, publicized
21 testimony of representatives of The Tobacco
22 Institute attempted to affect the risk perception
23 or the positive, if you will, attributes of
24 smoking?

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W. Kip Viscusi, Ph.D.

03:08:50 1 A. Well, I'm sure the purpose of their
2 efforts is to reflect the interests of the tobacco
3 industry, so I have no reason to believe that
4 they'd do something intentionally harmful to the
03:09:02 5 industry.

6 Q. You would believe that they would have
7 the interests of the industry at heart and would
8 through their public relations effort try to
9 encourage people to smoke cigarettes, which was the
03:09:14 10 business of the cigarette industry. Correct?

11 A. I don't know what they do beyond the data
12 acquisition and occasionally I know they're
13 involved in lobbying efforts before Congress.

14 Q. However -- Let me ask you if you agree
03:09:46 15 or disagree with this statement. Strike that. Do
16 you have a reason to believe that if nicotine had
17 been removed from cigarette products let's say
18 after 1964, that people would still be smoking
19 cigarettes today?

03:10:00 20 A. I have no reason to believe that nobody
21 would smoke cigarettes. But I think that nicotine
22 is an attribute of cigarettes that people enjoy and
23 that does affect the sales of cigarettes.

24 Q. Let me ask you if you agree with this

W. Kip Viscusi, Ph.D.

3:10:16 1 statement: "If, as proposed, nicotine is the sine
2 qua non of smoking," that means cause without
3 which, "and if we meekly accept the allegations of
4 our critics and move toward reduction or
03:10:26 5 elimination of nicotine in our products, then we
6 shall eventually liquidate our business." This is
7 a quote of Claude Teague of RJR in 1971. Do you
8 agree that, first of all, nicotine was the sine qua
9 non of smoking?

03:10:38 10 A. I don't know what the main thing that
11 drives smoking is. I know that nicotine is an
12 important attribute of cigarettes just like
13 caffeine is a desirable product characteristic of
14 coffee for many people.

03:10:52 15 Q. So you cannot say then and do not agree
16 that nicotine is the cause without which of
17 smoking, in other words, the sine qua non of
18 smoking?

03:11:04 19 A. Some people smoke lower-nicotine
20 cigarettes and choose to do so. So it's not as if
21 we have evidence that people are trying to maximize
22 nicotine intake.

23 Q. Well, are you aware of the ammoniation
24 process that RJR and Philip Morris had?

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03:11:20 1 A. No. I'm not a scientist so I don't know
2 the details of --

3 Q. Never heard of that?

4 A. No.

03:11:28 5 Q. To your knowledge, up until the time that
6 documents of the tobacco industry were released
7 pursuant to subpoena and litigation involving the
8 Attorney Generals, were you aware of any statement
9 in the scientific literature, the medical
03:11:44 10 literature or the tobacco industry, that indicated
11 that the tobacco industry was adding ammonia to its
12 product in order to give nicotine a bigger kick,
13 quote and quote, by increasing the pH of the
14 nicotine?

03:12:00 15 A. I believe -- I knew ammonia was an
16 ingredient in some cigarettes but I didn't know the
17 purpose of the ammonia.

18 Q. Did you know it was added to the
19 cigarettes?

03:12:08 20 A. I didn't know it was an additive as
21 opposed to something naturally occurring.

22 Q. Let's say in 1970 the tobacco industry
23 made an announcement in the newspaper and hired The
24 Tobacco Institute to put articles in 489 newspapers

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produced by RJRTC

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3:12:24 1 with circulation of about 43 or 50 million people
2 in this country, Philip Morris and R.J. Reynolds
3 have been adding ammonia to their product in order
4 to give a bigger kick to the nicotine levels in
3:12:40 5 their product. Do you have an opinion as to
6 whether that would have been new information at
7 that time?

8 A. I think it would have been new knowledge,
9 but I also think it would have been misleading
3:12:52 10 information where people would react to the
11 chemical additives and express alarm at an additive
12 whereas cigarettes overall are much more risky than
13 the particular additive.

14 Q. Well, I'm just asking whether that would
3:13:06 15 have been -- You agree that would have been new
16 information at least. Correct?

17 A. It would tell some people things that
18 they didn't already know, yes.

19 Q. Do you have an opinion as to whether the
3:13:16 20 release of that information in the way I've
21 described would have had an impact on risk
22 perception because of an information transfer?

23 A. Well, you're telling people that they're
24 adding ammonia to affect the influence of

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03:13:34 1 nicotine. As I see it, you're not telling them
2 anything that affects the lung cancer risk, the
3 mortality risk or the life expectancy risks of
4 smoking. It's not clear how people are going to
03:13:49 5 interpret it. So if you present this information,
6 they might think that by adding ammonia cigarettes
7 don't have to be as, quote, potent in other
8 dimensions in order to get the same nicotine
9 effect, which may mean that they're less risky for
03:14:02 10 their health. So I'm not exactly sure how it will
11 play out in terms of risk beliefs.
12 Q. You're hypothesizing some way that people
13 might receive that information. Correct?
14 A. You're telling me that. They're going to
03:14:14 15 put an ad in the newspapers.
16 Q. No, that's just what the information is.
17 You're now going to how they would have perceived
18 it. Right?
19 A. How they would have processed it.
03:14:26 20 Q. I'm asking you this question: With
21 that -- All right. I think you've already
22 answered it.
23 You in your background in labels and
24 warnings, often particularly as it relates to food,

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3:14:52 1 are you aware of efforts by food growers or
2 manufacturers, product sellers that list the
3 additives that are added to a particular product?
4 Have you seen that before?

3:15:04 5 A. In many cases there are laws that require
6 these things.

7 Q. Okay.

8 A. And in other instances, such as wine, the
9 companies resisted such efforts.

3:15:16 10 Q. But you have seen warning labels that do
11 include the additives that are in the product.
12 Correct?

13 A. Some foods do. Some products that you
14 consume don't. It depends on the FDA restriction.

3:15:30 15 Q. And that of course would depend upon
16 whether the FDA has obtained jurisdiction over the
17 particular food item. Correct?

18 A. That's correct.

19 Q. And you understand that the tobacco
20 industry fought against any efforts to characterize
21 tobacco as a food product. Correct? Are you aware
22 of that?

23 A. I'm not aware, but it seems to make sense
24 to me.

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W. Kip Viscusi, Ph.D.

03:15:56 1 Q. And do you believe that the tobacco
2 industry should voluntarily identify the additives
3 in the product that they sell?

03:16:12 4 A. No. I think that the government should
5 have risk ratings for cigarettes that the
6 government undertakes as opposed to industry
7 disclosure of the list of all the chemicals in
8 cigarettes.

03:16:22 9 Q. Well, I didn't ask about the list of
10 chemicals; I asked about the additives. You
11 understand there's a difference?

12 That's fine too. Listing the chemicals,
13 it's not clear how the chemical list will be
14 processed either, even if they're only added
03:16:32 15 chemicals.

16 Q. So you don't think the industry
17 voluntarily should indicate on their packaging
18 that, for instance, they added ammonia to the
19 product. Correct?

03:16:42 20 A. I don't think the government or the
21 industry should require ingredient disclosure.

22 Q. Do you think it is important to parents
23 of teenagers who are determining whether to smoke
24 or not, for the parents to be able to give advice

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13:17:04 1 to their sons or daughters, to know whether the
2 industry itself believes that its product is
3 addictive?

03:17:16 4 A. No. It's important for them to know what
5 information is in the public domain, which is right
6 now we've already had the Surgeon General
7 designating cigarettes as addictive. So that
8 I don't think what the president or head of Philip
9 Morris or RJR thinks matters to me whatsoever.

03:17:30 10 Q. Well, what about historically, though,
11 before the Surgeon General determined that smoking
12 was addictive in 1988? Do you believe, for
13 instance, in the early '60s that the tobacco
14 industry could have and should have informed
15 parents of potential teenager smokers that their
16 product was addictive if they believed it?

03:17:46 17 A. I think people have known that cigarette
18 smoking is hard to quit for as long as I've been
19 alive. I mean, it was certainly common knowledge
20 in the 1950s. So that I don't see where changing
21 medical designations necessarily has a dramatic
22 effect on the public's perceptions of what it means
23 for hard to quit.

24 Q. Did teenagers in the 1950s that were

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03:18:14 1 under the age of 18, are there any studies that
2 showed they realized before they started smoking
3 that smoking was hard to quit?

03:18:22 4 A. I did as a child because my parents
5 talked about these things. These things are in the
6 public domain. Other people, even if they're
7 teenagers, hear adults talking, talk to adults,
8 hear discussions on TV. So teenagers don't live in
9 a vacuum.

03:18:36 10 Q. So your support is anecdotal, not based
11 on studies. Is that correct?

03:18:44 12 A. You asked me if anybody knew and I think
13 these are things that would be in the public domain
14 and there's no reason why teenagers are excluded
15 from discussions in the media, discussions on TV,
16 discussions of other adults that they come into
17 contact with. So that if you're asking does
18 anybody know, certainly people would know then.

03:19:00 19 Q. The basis of your opinion then is
20 anecdotal as opposed to any study that has been
21 conducted. Correct? Any survey.

22 A. Regarding whether teenagers knew it was
23 hard to quit back then?

24 Q. Right, before they started smoking.

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W. Kip Viscusi, Ph.D.

03:19:18 1 A. I'm not sure how far those studies go
2 back.

3 Q. You can't cite one that goes back to the
4 '50s then. Correct?

03:19:26 5 A. I cite a lot of studies in my book, but
6 I'm not sure if they relate to hard to quit.

7 Q. Have you made any systematic review of
8 the popular literature in the 1950s to determine
9 what was said about cigarette smoking being
10 addictive?

11 A. I've read the Reader's Digest articles.
12 Do they say it's addictive?

13 A. I forget what they said. But I remember
14 they did talk -- All the articles were dealing
15 with the health consequences of cigarettes.

16 Q. Well, addiction is not necessarily
17 something that will -- Strike that.

18 Was addiction identified in any of
19 the Reader's Digest articles as one of the health
20 consequences of cigarette smoking?

03:20:19 21 A. First of all, I don't regard addiction so
22 much as a health consequence as a property of
23 cigarettes, the hard-to-quit aspect. So being hard
24 to quit doesn't necessarily cause lung cancer. It

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W. Kip Viscusi, Ph.D.

03:20:30 1 increases the probability of lung cancer. Your
2 continued smoking would affect that risk, not the
3 hard-to-quit aspect. So I don't view hard to quit
4 as a health outcome.

03:20:40 5 Q. I'm just asking was that in the Reader's
6 Digest, Doctor. I don't --

7 A. I don't know. I don't remember what
8 I read.

9 Q. Was the fact that cigarettes are hard to
10 quit in the Reader's Digest article?

11 A. I don't recall which year this might have
12 come up. I didn't memorize all the years.

13 Q. Have you done any systematic study of the
14 popular literature other than the Reader's Digest
15 articles, if you want to call that systematic, to
16 determine where it was mentioned that cigarette
17 smoking was addictive or habit-forming in the 1950s
18 and early '60s? Have you done any study to look at
19 that?

03:21:00 20 A. In my book I've done an inventory of all
21 the Surgeon General's reports and typically they're
22 all accompanied by press releases that are picked
23 up, so I would want to review the reports
24 themselves. And I think if you matched up the

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03:21:20 1 reports to the press releases at the time and the
2 news coverage at the time, I'm sure you'd find some
3 discussion of hard to quit in some of the reports.

03:21:30 4 Q. Well, certainly in the 1964 report there
5 was mention of it being habit-forming. Correct?

6 A. I don't recall which report. I know the
7 '64 did a lot on lung cancer.

03:21:42 8 Q. Right. But was there anything before
9 1964 by the Surgeon General, whether it be in a
10 press release or report, that said cigarette
11 smoking is, A, addictive or, B, habit-forming? Do
12 you know?

13 A. I don't know.

03:21:54 14 Q. But certainly there was a dropoff over
15 the next fifteen years in smoking consumption after
16 the '64 Surgeon General's report. Correct?

17 A. And a lot of other things that took place
18 around that time period.

03:22:24 19 Q. Now, let me go to another topic. As
20 I understand your testimony that you were going to
21 present in Minnesota, you testified that the amount
22 of costs that were paid by the state in medical
23 costs for Medicaid was less than the savings that
24 were made to the state and federal government in

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03:22:52 1 Social Security, pension and retirement, nursing
2 home costs, from the fact that unfortunately
3 smokers died earlier than non-smokers in general.

03:23:04 4 I know that's my summary of it, but is that
5 accurate, that you were going to address that
6 topic?

7 A. I would drop Social Security from that.
8 So my focus was only on state-specific costs.

9 Q. Okay. But what were the state-specific
03:23:18 10 costs that were balanced against the net -- strike
11 that -- against the medical costs of Medicaid that
12 were being sought?

13 A. Well, excise taxes exceeded the Medicaid
14 costs individually, nursing-home care cost savings
03:23:32 15 exceeded the Medicaid costs, and the pension cost
16 savings exceeded the Medicaid costs. So there are
17 three different cost components that individually
18 exceeded the Medicaid costs.

19 Q. And you computed, as I recall it, the
03:23:48 20 medical costs related only to the medical care as
21 at approximately, well, I guess you did it as a
22 price per pack?

23 A. That's correct.

24 Q. And, as I understand it, it was about

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13:24:00 1 50 cents per pack?

2 A. Whoa! That's way too big for the state
3 of Minnesota.

4 Q. Let me just see; maybe I had a different
13:24:58 5 state in mind. I'm referring to your.... (Pause)

6 MR. WITHEY: Actually, why don't we
7 take a break here and I'll gather my documents for
8 this next questioning. Why don't we go off, take a
9 ten-minute break.

13:26:20 10 THE VIDEOGRAPHER: Going off the
11 record. Time is 3:26.

12 (Short recess taken.)

13 THE VIDEOGRAPHER: Back on the
14 record. The time is 3:35.

13:35:50 15 BY MR. WITHEY:

16 Q. I've found the cite I was looking for.
17 The article you wrote called The Governmental
18 Composition Of The Insurance Costs Of Smoking,
19 dated October 26, 1998, on page 25 looked at the
13:36:14 20 national baseline estimates of the medical costs of
21 smoking.

22 A. Right.

23 Q. And it says the total medical care cost
24 externality -- meaning costs that were not borne by

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W. Kip Viscusi, Ph.D.

03:36:24 1 either the tobacco industry or the smoker but
2 rather costs borne by the health care payor.
3 Correct?

03:36: 4 A. Including the federal government, state
5 government and private insurance companies.

6 Q. -- averages 58 cents per pack, where
7 about two-thirds of these costs are incurred before
8 smokers reach age 65. Is that correct?

9 Yes.

03:36:54 10 Q. And then in another cite called How
11 Tobacco Profits State Governments, From Cash Crop
12 To Cash Cow, published in Regulation in the summer
13 of '97. Do you remember this?

14 A. I do.

03:37:10 15 Q. You state on page 29 "The estimate
16 suggests that cigarette smoking leads to increased
17 health care costs by 33 cents per pack before age
18 65 and by 17 cents per pack after age 65, for a
19 total medical cost effect of an additional 50 cents
20 per pack."

21 A. I remember that.

22 Q. Now, there is some variation between 50
23 cents and 58 cents, but do you know what accounts
24 for that?

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03:37:34

1

A. I have another article called something

2

like The Social Costs Of Cigarette Smoking where

3

I have different estimates based on different sets

4

of assumptions, different discount rates, so these

03:37:40

5

would determine the differences. So it depends on

6

what reference point you use. In fact, I have at

7

least half a dozen different estimates in that

8

larger article.

9

Q. At any rate, are these calculations that

03:38:04

10

you yourself have made or do you rely on other data

11

or statistics to generate them, or both?

12

These are my calculations using data and

13

other studies as well.

14

Q. Could you identify, because I don't see

03:38:16

15

any footnote to either of these articles, what

16

studies you used to rely upon in formulating your

17

testimony or at least your opinion that the costs

18

of health care for smokers per pack was either 58

19

cents or 50 cents?

03:38:36

20

A. Well, all of these sources and the

21

methods of calculation are listed in my article

22

called Cigarette Taxation And The Social

23

Consequences Of Smoking published in 1995.

24

Q. I think that's on your bibliography.

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03:38:48

1

Correct?

2

A. Yes.

3

Q. Is that in your reliance papers as well?

4

A. Number 2 on page 2 of my designations.

03:39:48

5

Q. Okay. And what leads to the assessment

6

that the price per pack for the medical costs is

7

33 cents before a smoker reaches the age of 65 but

8

goes down to 17 cents thereafter?

9

A. The medical costs occur at different

03:40:04

10

times in people's lives, so it's tracking the

11

lifetime pattern of costs.

12

Q. Is it also a result of the fact that

13

people, it goes down because smokers are likely to

14

die more earlier and therefore have less health

03:40:18

15

care costs after age 65 than before age 65? Might

16

that be a factor?

17

A. That -- Well, if smokers had the same

18

health care profile as non-smokers, all these

19

numbers would be zero. So I'm just reflecting what

03:40:38

20

are the costs, period. And the appropriate

21

reference point is, what are the incremental costs?

22

So that would include recognition of the life

23

expectancy effects of smoking, yes.

24

Q. Now, was one of the reasons -- Well, you

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3:40:56 1 were prepared to testify in Minnesota that the
2 State of Minnesota actually made money, if you
3 will, a cash cow for the State of Minnesota, as a
4 result of the consumption of cigarettes because the
5 State of Minnesota as other states saved money in
6 the three areas you've identified, or made money,
7 excise taxes, health care costs and pension costs,
8 as a result of the fact that people who smoked
9 cigarettes died earlier than those who did not. Is
10 that correct?

11 MR. ATKESON: Objection, counsel. He
12 was not designated on that topic in Minnesota. We
13 had other experts who were going to address that.
14 What he was going to testify with regard to that
3:41:58 15 area is the proper methodology for assessing it,
16 but he was not going to give a bottom-line answer
17 as to whether or not the state saved money.

18 So he was going to say that a
19 longitudinal lifetime analysis was the proper way
3:42:08 20 to go, which is the subject of that social
21 consequences article that he referred to, but he
22 was not going to talk about specific numbers.

23 BY MR. WITHEY:

24 Q. You were going to talk about the notion

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13:42:22 1 that in assessing the costs, quote-unquote, to the
2 State of Minnesota, in your opinion at least you
3 had to look not only at what the medical costs
4 were, which is whatever it was in the state of
13:42:52 5 Minnesota, if it wasn't 50 cents per pack it was
6 some other number, and that that had to be offset
7 by the cost savings made in those three areas.

8 Correct?

9 A. I don't refer to anything as offsets and
13:42:50 10 cost savings. My philosophy is that if you're
11 filing a claim for costs, you have to look at the
12 net total costs. So I would not designate them as
13 savings. These are just things that never
14 happened. So if cigarette smokers have a shorter
13:43:06 15 life expectancy, that's not a cost saving; it's
16 just a cost that never occurred.

17 Q. Well, you understood, though, that --
18 You're not making a judgment as to the legal
19 question of the evidentiary issue of whether that
13:43:18 20 evidence should be admissible or not? You have no
21 opinions on that. Correct?

22 A. My only opinion is what makes economic
23 sense if you're trying to calculate what costs are.

24 Q. Right. But not necessarily what public

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3:43:28 1 policy or the courts would rule is or is not
2 admissible. You have no opinions about that.
3 Correct?

3:43:30 4 A. Except insofar as they want to know what
5 sound accounting of these costs would be. I would
6 just state, you know, things along those lines as
7 opposed to making legal rulings.

3:44:02 8 Q. You've offered the judgment that any
9 legal proceeding seeking to assess costs should
10 take your view that you look at the medical costs
11 and then you also factor in the excise taxes, the
12 health care, nursing care, I mean cost savings, and
13 then the pension that's saved by the fact that
14 people don't get pensions if they die early of
3:44:22 15 smoking. You've stated that in the published
16 literature, that any proceeding should look at
17 that. Correct?

3:44:30 18 A. Any proceeding that's claiming that there
19 is an economic harm done to a party should look at
20 the net economic harm.

21 Q. Were you informed that the judge in the
22 Minnesota case excluded from evidence the evidence
23 that there had been what he termed a death benefit,
24 that is, that there was some savings that accrued

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13:44:50 1 as a result of the fact that smokers died earlier?

2 A. Different judges make different rulings.
3 I don't know what they made in each state.

03:44:56 4 Q. You don't know what Minnesota ruled on
5 that?

6 A. No.

7 Q. And to your knowledge did that have
8 anything to do with the fact you did not testify,
9 that he had made that ruling?

10 A. That never came up as an issue.

11 Q. Now, you understand that what's involved
12 in this case is not a state government. Correct?

13 A. That's correct.

14 Q. You understand that union health and
15 welfare funds do not have the right to impose
16 excise taxes on any cigarettes sold in the state of
17 Ohio. Correct?

18 A. That's correct.

19 Q. You understand that there is no pension
20 savings in paying pensions by the trust funds
21 because they don't pay pensions. You understand
22 that?

23 A. I don't know how the pensions operate.

24 Q. But you understand that this is not a

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13:45:44 1 pension, a retirement fund that's bringing this
2 lawsuit? You understand it is a health and welfare
3 fund. Correct? By reading the caption and reading
4 the complaint.

13:45:54 5 A. Right. But I don't know if this union
6 also has a pension that should be legally
7 considered. I'm just not familiar with those
8 details.

13:46:04 9 Q. You understand it's not the union that's
10 bringing the lawsuit?

11 A. I don't know if it's the union or the
12 health and welfare fund. I didn't make those
13 distinctions.

13:46:12 14 MR. ATKESON: Counsel, let me just
15 tell you, he is not being offered as an expert on
16 damages here.

17 MR. WITHEY: I understand that.
18 Well, thank you for informing me of that. Can
19 I assume that you are not going to offer any
13:46:24 20 testimony about the damage calculations in this
21 case or the appropriateness of the method used? Is
22 that right?

23 MR. ATKESON: What he will say is the
24 same thing that he's said in Minnesota and other

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03:46:36 1 places, that if you ask him from an economic
2 perspective how he should calculate damages, he
3 will tell you you should do a longitudinal lifetime
4 analysis. Beyond that, we are not asking him to do
03:46:42 5 anything.

6 BY MR. WITHEY:

7 Q. Do you understand therefore that the
8 trust funds are created by both the employer as
9 well as the employees represented by their union?
03:46:56 10 Do you have that understanding?

11 A. You've just told me. Nobody's -- I've
12 never discussed this with the attorneys on my side.

13 Q. All right. Do you understand that if
14 there is any savings for pensions that the pension
03:47:12 15 plan has because smokers smoke and die earlier,
16 that that is not savings that is captured by the
17 union health and welfare fund in this case?

18 A. I don't know how it works. But I'm
19 willing to act under that assumption.

03:47:26 20 Q. Do you understand that the only, well,
21 the vast majority, I'll put it that way, of the
22 expenditures that are calculated by the damages
23 model in this case are those that occurred before
24 the age of 65?

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3:47:38 1 A. That seems reasonable given how
2 I calculated the numbers too.

3 Q. And in fact begin at the age of 35. In
4 other words, they're not seeking any health care
5 costs for sudden infant death syndrome or any
6 juvenile or childbirth-related illnesses or
7 diseases. Did you understand that?

8 A. All right.

9 Q. With that being true, that there's no
3:48:06 10 excise taxes imposed, that there's perhaps a few
11 expenditures above the age 65, less than 10 percent
12 of total expenditures, and where the pension and
13 retirement costs or savings are not realized by the
14 health and welfare fund, that in those
3:48:28 15 circumstances it would be appropriate for experts
16 looking at the damage model to look at the cost of
17 health care that was paid out for smoking-
18 attributable expenditures without the three offsets
19 that you've testified were necessary in the state's
3:48:42 20 case?

21 A. Excise taxes are surely out. I don't
22 know if nursing home care coverage is covered by
23 the union or not.

24 Q. Okay.

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03:48:54 1 A. And whether pensions count or not would
2 probably be a legal issue as to whether you're
3 going to toss pensions in or not, which is not
4 something I can tell you the answer to.

03:49:00 5 Q. Okay. So, in other words -- Well, have
6 you done in any of your work an analysis of the
7 cost per pack of medical care in the state of Ohio?

8 A. Yes.

03:49:18 9 Q. And that's approximately -- Well, that's
10 found within one of --

11 MR. ATKESON: Counsel, can I clarify
12 your question? Are you asking to the State of Ohio
13 or are you asking -- ?

03:49:26 14 MR. WITHEY: Well, that's a good
15 point.

16 BY MR. WITHEY:

17 Q. Was it to the State of Ohio or --

18 A. To the State of Ohio.

19 Q. Not in the state of Ohio?

03:49:32 20 A. Correct.

21 Q. Okay. And that data is presented in
22 your -- Which one is that one in?

23 A. The Governmental Composition paper,
24 October '98.

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3:50:04 1

Q. Okay. Yeah, I've got that.

2

A. That's a draft copy for review only. The numbers may change.

3

4

3:50:12 5

Q. Have the numbers changed since you've drafted this thing?

6

A. Not since October.

7

Q. Who did you write this for?

8

A. It's under review at Journal of Law and Economics.

9

3:50:24 10

MR. ATKESON: It's number 6, counsel.

11

MR. WITHEY: Yeah, I've got it here.

12

I'm just trying to find the page with Ohio in it.

13

Oh, here it is. Okay.

14

BY MR. WITHEY:

3:50:44 15

Q. The net external cost per pack in Ohio for medical care was 28 cents. Does that sound about right?

16

17

18

A. Sounds more like 2.8 cents, sounds more like what it should be. I'll be happy to look at the table.

19

3:50:56 20

21

Q. Oh, yeah, 2.8, you're right. Did you quantify then how many cigarettes were sold in the state of Ohio that would fall within that?

22

23

24

A. The Tobacco Institute has that data. But

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03:51:10 1 it's easy enough to look up. But it's not in the
2 article.

03:51:42 3 Q. Would you agree that of the three,
4 between the nursing home or nursing care costs and
5 the pension costs -- I shouldn't say savings,
6 right? -- that the retirement is probably the
7 figure that's most effective nationwide, that
8 contributes the most to savings?

9 A. You mean in terms of the state costs?

10 Q. Yes.

11 A. I would have to take a look. I think the
12 excise taxes are awfully big in some states.

13 Q. Okay. But I meant as between health care
14 costs and pension costs, the pension costs would be
15 the higher between the two of them, generally?

16 A. I haven't looked, you know. But it's all
17 in that table.

18 Q. I mean, it seems to be. That's why I was
19 asking the question. I just -- You want to look
20 at the table, just to -- I guess it's not true in
21 every state, though, so I guess it depends on state
22 to state, huh?

23 A. Apparently.

24 Q. Now, is that on a yearly basis, those

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13:52:40 1 medical costs?

2 A. Yes. That would be costs per pack you
3 buy now, present value of the cost per pack.

03:53:07 4 Q. Have you determined, made any effort in
5 any of your work to determine what percentage of
6 total expenditures of any particular health care
7 payor the smoking-attributable fraction of that
8 would be?

3:53:18 9 A. No, because that varies over time and
10 doing it that way will not give you the appropriate
11 calculation after the smoker is dead. So you have
12 to take into account the different time frame and
13 the length of time they're incurring costs as well
14 as whether it's now or next year. Because
3:53:32 15 discounting matters.

16 Q. For future medical costs you'd have to
17 discount the present value using some multiplier.
18 Correct?

3:53:44 19 A. Right. And also correct for the duration
20 in which these costs are incurred at different
21 rates.

22 Q. Now, you are not familiar as I understand
23 it with the whole concept of how to calculate
24 smoking-attributable fractions. Correct?

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03:54:02 1 A. If you're asking for an I familiar with
2 the kind of thing Harris has done in terms of
3 relative risk ratios and the fractions of costs
4 attributable to smoking?

03:54:10 5 Q. Well, I'm asking you, do you know what
6 the term smoking-attributable fraction means?

7 A. The fraction of the health care costs
8 attributable to smoking at any point in time.

9 Q. No.

03:54:20 10 A. Then I don't know what you're talking
11 about.

12 All right. You were asked this in
13 Minnesota and I think the question was the
14 population-attributable risk or attributable risk
03:54:32 15 formula found in the Surgeon General's report is
16 something that is outside your field. Fair enough?

17 A. Well, I do relative risk ratios and teach
18 those things, but the other things, no.

19 Q. In other words, if I asked you what's the
03:54:44 20 population-attributable formula set forth in the
21 1989 Surgeon General's report, you probably
22 wouldn't be able to tell me. Correct?

23 A. Right.

24 Q. And, I mean, that's a question for

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03:54:54 1 epidemiologists, not economists generally.

2 Correct?

3 A. Well, it's not something I could do.

03:55:03 4 Q. And I take it, then, you've made no
5 effort to determine what is the population-
6 attributable risk for the trust funds in this case?

7 A. No.

03:55:14 8 Q. You have made no attempt to determine
9 what the smoking-attributable fraction of the
10 health care of mortality in this population is.

11 Correct?

12 A. No. Yes, I've made no attempt.

03:55:32 13 Q. But you have, however, calculated at
14 least the price per pack per year of cigarette
15 smoking as an external or externalized cost for
16 medical care. Correct?

03:55:40 17 MR. ATKESON: Objection, counsel,
18 misstates his testimony. He didn't say it was per
19 year. It's the present value, a one-time shot per
20 pack, not annual.

21 BY MR. WITHEY:

22 Q. It wasn't per year then; I misunderstood?

23 A. No, the discounted value per pack.

24 Q. You believe, do you not, that smoking

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03:55:52 1 causes people to incur diseases such as lung
2 cancer, heart disease and pulmonary diseases.
3 Correct?

03:55:58 4 A. No, because these are not
5 nonprobabilistic statements having to do with
6 cause. I believe that smoking increases the
7 probability of certain ailments.

03:56:14 8 Q. But you cannot agree or concede that
9 smoking actually causes those diseases in given
10 human beings and in populations, then, I take it.
11 Is that correct?

12 A. Once again, saying smoking causes the
13 disease, some people can interpret that as it
14 increases the probability of getting it from zero
15 to 1, but I don't think there's any evidence that
16 that's the case.

17 Q. Is there evidence that the Surgeon
18 General has cited that leads the Surgeon General
19 and the consensus of the medical community in this
20 country that smoking causes lung cancer, heart
21 disease and pulmonary disease?

22 A. They can say whatever they want. But all
23 I'm saying is on the question of the terminology
24 I'm using, which I believe reflects the legitimate

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3:56:50 1 meaning of these words, that to say that cigarettes
2 increase the probability of getting these ailments
3 is a much more accurate reflection of the truth
4 than to say it causes it, which would lead some
3:57:04 5 people to think that the risk increases from zero
6 to 1.

3:57:26 7 Q. So for the Surgeon General in his reports
8 to say the medical community has now established
9 based upon the criteria of the epidemiology
10 literature that smoking causes lung disease would
11 mislead people to believe it always causes lung
12 disease? Is that your testimony?

3:57:36 13 A. No. I think that that's an extremely
14 imprecise statement for any Surgeon General to
15 make, because all it means presumably is that
16 somebody has found a statistically significant
17 positive effect between smoking and lung cancer
18 where the increased probability could be anywhere
19 from something that's very negligible, under
3:57:52 20 1 percent increase, to a hundred percent for sure.
21 So that to say that there is some effect, undefined
22 causal effect, has implications that go all across
23 the map in terms of their significance.

24 Q. Your not being trained in epidemiology,

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03:58:10 1 I'd understand why you may have trouble with this
2 question. But have you applied -- You understand
3 that the epidemiologists and the medical profession
4 have developed a set of criteria for inferring a
03:58:22 5 causal relationship between any exposure to a
6 particular substance and disease?

7 A. I am familiar with risk communication and
8 how people process risk information, how you should
9 state -- Excuse me. Let me finish the answer
10 before you stop me.

11 Q. Just so you answer --
12 No, let me finish the answer. So that
13 how you express things should be expressed
14 correctly irrespective of what discipline you come
15 from. So it is the risk communication and accurate
16 conveying of the extent of our statistical
17 knowledge that's at issue.

18 Q. So you would disagree with the Surgeon
19 General's warnings that says smoking causes lung
20 cancer then. Correct?

21 A. I say it is imprecise and doesn't mean
22 anything other than there's a statistically
23 significant effect that could be anywhere from zero
24 to 1, so it's very misleading. It tells us

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03:59:08 1 virtually nothing.

2 Q. So how would you frame the Surgeon
3 General's warning on smoking?

4 A. It is something that I would want to
03:59:18 5 test. I would not give warnings with respect to
6 particular ailments. I would rate the overall
7 mortality risk of cigarette smoking on a
8 quantitative scale so that people could make cross-
9 product comparisons.

10 03:59:28 Q. So go ahead. Tell me what it would say.

11 A. I haven't designed it. But I usually
12 can't design warning labels off the cuff in
13 deposition. But what you would want to convey is
14 the overall riskiness in terms of the lifetime
15 03:59:42 mortality risk. Then you'd want to pretest that on
16 consumers to see how they process the information.
17 Given how they've processed it, did they end up in
18 the true ballpark of the actual risk? So you'd
19 have to actually test this in the field before
20 03:59:54 you'd turn people loose with this.

21 Q. And of course the tobacco industry could
22 have tested people in the field to see how they
23 would react to given warnings if they had decided
24 to voluntarily impose it upon themselves. Correct?

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04:00:06 1 A. I think this is something the government
2 should do since the government has to establish the
3 risk ratings. If the tobacco industry goes out
4 there and says Lark cigarettes are comparatively
04:00:14 5 safe, I don't think this is something that they're
6 going to be permitted to do. They were not
7 permitted to say that the Premier cigarette was a
8 comparatively safe cigarette because that would be
9 a health claim. This is not something the
04:00:28 10 cigarette industry can do legally.

11 Q. Are you exercising -- I mean, are you
12 testifying then as a legal expert on the impact of
13 the federal cigarette labeling act? Your testimony
14 is that they couldn't say these things that you're
04:00:46 15 saying they couldn't say?

16 A. I'm just saying that as a regulatory
17 economist I know that there are regulatory
18 restrictions on making health-related claims for
19 cigarettes. And to say that one cigarette is safer
04:01:00 20 than another cigarette or poses comparatively low
21 health risks is a health-related claim that there
22 would be regulatory restrictions about.

23 Q. Meaning they have to establish that it's
24 true. Correct?

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04:01:08 1 A. It's also something that the government
2 would want to approve before they could make a
3 health claim.

04:01:14 4 Q. Okay. But are there similar prohibitions
5 against the tobacco industry calling a press
6 conference and announcing to the world that their
7 scientists have determined that, to quote -- who
8 should we quote this time? How about Liggett &
9 Myers from 1961 -- "There are biologically active
10 materials present in cigarette smoke. These are
11 cancer-causing, cancer-promoting, poisonous,
12 stimulating, pleasurable, and flavorful." There is
13 some law that prevented them from doing that. Is
14 that your testimony?

4:02:06 15 A. If people are to have the freedom to
16 disclose information, it should be completely
17 symmetric with respect to favorable information as
18 well as unfavorable information about their
19 product. People already overestimate the risk of
20 cigarette-smoking, so that anything that an
21 industry would disclose would push people further
22 away from the truth.

23 Q. Well, but this was in 1961.

24 A. They may have overestimated the risk back

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04:02:32 1 then; I don't know.

2 Q. You're speculating, right?

3 A. I said they may.

4 Q. You don't know, though?

04:02:36 5 A. I don't know.

6 Q. Getting back to -- But you understood,
7 did you not, that there was nothing in the
8 regulations that prohibited any product
9 manufacturer, cigarette product manufacturer, from
10 going to the government, submitting to the FDA any
11 studies, findings that they had about the relative
12 safety of their product and asking that the FDA
13 approve that product for sale under whatever label
14 or whatever statement that was made about it?

04:03:00 15 A. I think their experience has been pretty
16 unfavorable. They compiled and released a book of
17 scientific studies on the Premier cigarette and the
18 government never did anything constructive with
19 respect to that other than try and drive it from
04:03:32 20 the market. So I've never seen the government take
21 a cooperative role in terms of sound risk
22 communication with respect to the cigarette
23 industry input.

24 Q. It was the government that drove Premier

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4:03:40 1 from the market. Is that your testimony?

2 A. No. I said that they attempted to drive
3 it from the market. The Surgeon General opposed
4 it; there was substantial press against it. So
4:03:58 5 that rather than encouraging Premier and other
6 innovative cigarettes developed by the cigarette
7 industry, they actually discouraged them.

8 Q. I think the question was, there wasn't
9 anything legally that prevented the company from
4:04:02 10 going to the FDA with their studies, with their
11 clinical trials to show that their product was
12 safer than others. Correct?

13 A. You can always go to the government.

14 Q. There you go.

4:04:12 15 A. The government will always talk to you.
16 That's the question I asked you. Thank
17 you.

18 So in the context of this case and
19 the trust fund smoking expenditures in this case,
4:04:34 20 can you think of any savings that the trust fund
21 made because of smoking?

22 MR. ATKESON: Objection. He's not
23 being offered as an expert on that.

24 BY MR. WITHEY:

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04:04:42 1 Q. Let me just explain, in the context in
2 which they didn't have the power to impose excise
3 taxes, in which a small percentage of their
4 expenditures were for people over 65, and where
04:04:50 5 they had no savings from pension costs.

6 MR. ATKESON: I'll add the objection
7 it calls for speculation.

8 BY MR. WITHEY:

9 Q. You can answer it.

04:05:04 10 A. I haven't reviewed any of the damage
11 studies. I'm not familiar with even what should be
12 counted in this lawsuit. I do know that there are
13 net cost savings in all the contexts I've analyzed,
14 but I haven't analyzed this context.

04:05:20 15 Q. So going back, then, if you believe
16 hypothetically that the medical cost of smokers
17 was -- let's just throw out a number -- 25 cents
18 a pack for the relevant smokers in this population
19 but there was no savings from any of the factors
04:06:00 20 that you've looked at as it relates to the state,
21 and if you believe that there was therefore some
22 finding of liability and causation in the case,
23 then it would in your judgment be appropriate to
24 impose that cost, that medical cost, upon the

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4:06:22 1 industry assuming liability and causation?

2 A. Sounds like a legal judgment to me.

3 Q. And you're not going to make legal
4 judgments here. Correct?

4:06:28 5 A. That's correct.

6 Q. That's up to the jury then. Correct?

7 A. And judge. It's not me.

8 Q. That question is nothing that you would
9 offer an opinion on then. Fair enough?

4:06:40 10 A. I'm just offering opinions on how you
11 should think about costs.

12 Now, are you aware of other studies that
13 have calculated the medical costs of smoking?

14 A. Yes.

4:07:12 15 Q. And you are familiar with Manning's work?

16 A. It's the building block for my study.

17 Q. And Manning's estimated external cost per
18 pack of cigarettes was somewhat lower than yours.

19 Is that correct?

4:07:26 20 A. Yes, it was.

21 Q. And what accounts for that?

22 A. Medical cost changed and hospital
23 utilization rates changed, all these different
24 things.

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04:07:36 1 Q. But it wasn't any disagreement about the
2 methodology of counting, it was more some changes.
3 Correct?

4 A. That is correct.

04:08:02 5 Q. Now, when you use the word "externalized"
6 in your work, and I think you've used it here or
7 maybe I've asked you a question about it, is it
8 fair to assume that one way of using that term is
9 to say, well, the tobacco industry had at least
04:08:22 10 potentially contingent liability, if you will, for
11 the costs of smokers' medical expenses if in fact
12 the -- Strike that.

13 Are you aware of any efforts
14 undertaken by the tobacco industry to exact or
15 bring about countermeasures or attack those who
16 were arguing that the social costs of smoking,
17 including medical costs, should be imposed upon the
18 tobacco industry and/or smokers?

19 A. I'm not aware of any such measures.

04:09:16 20 Q. Is it fair to state that had either the
21 government or the anti-tobacco, anti-smoking
22 movement been able to impose the costs of medical
23 care upon the tobacco industry, that they would
24 have a direct financial incentive for finding a

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4:09:34 1 safer cigarette?

2 A. Well, so far all my calculations have
3 indicated that the net social costs are not
4 positive; and in terms of how you would want to tax
5 them optimally from the standpoint of social
6 efficiency would be to reflect the net social cost,
7 not the particular cost to a union health care fund
8 but to everyone. And if you include the cost to
9 everyone, which is to the entire United States
4:10:10 10 economy, on balance cigarettes save society money.
11 So the efficient thing would be to subsidize them,
12 not to tax them.

13 Q. Let me ask you some questions about your
14 work on FDA jurisdiction and on safer cigarettes.
4:10:32 15 As I understand some of your articles in the
16 literature, you actually support constructive
17 cigarette regulation through the FDA. Correct?

18 A. I support FDA rating of the comparative
19 riskiness of cigarettes.

4:10:46 20 Q. Would that require the FDA, if you know,
21 to assume jurisdiction over cigarettes?

22 MR. ATKESON: Calls for legal
23 conclusion.

24 A. I have no idea.

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04:10:54 1 Q. Well, if it did, you'd still be in favor
2 of it. Correct?

3 A. Yes.

04:11:20 4 Q. Have you reviewed -- Strike that. You
5 were involved in a limited aspect but some aspect
6 of the Premier cigarette that was proposed to be
7 marketed by RJR. Correct?

8 A. After it was on the market.

04:11:30 9 Q. And it was an issue related to any labels
10 or labeling. Correct?

11 A. That's correct.

12 Q. And at the time were you provided any
13 documents related to the test marketing that RJR
14 had done on the Premier cigarette?

04:11:44 15 A. No.

16 Q. Were you provided any documents at all
17 from RJR?

18 A. No.

4:11:52 19 Q. Well, how were you supposed to help with
20 the label if you weren't given that information?
21 Tell me what you were asked to do.

22 A. Well, I came there and I reviewed the
23 warning label that they had. There was discussion
24 of the experience in the field where some of the

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4:12:04 1 carbon tips fell off and could potentially start a
2 fire, so there was a desire to incorporate in the
3 warning some information regarding that hazard.

4 Q. Now, would you agree, though, that
4:12:34 5 promoting safer cigarettes is a socially beneficial
6 thing to do from the standpoint of human disease as
7 well as risk perception?

8 MR. ATKESON: I'm sorry, counsel. Is
9 it promoting what?

4:12:48 10 MR. WITHEY: Safer cigarettes.

11 MR. ATKESON: I'm sorry; safer
12 cigarettes.

13 A. From my standpoint I want cigarette
14 smokers to have a diverse range of safety choices
4:13:00 15 to make. It can include risky cigarettes and safer
16 cigarettes so they can pick the risk level that's
17 most appropriate for their own preferences.
18 I would judge social efficiency from the standpoint
19 of what maximized individual consumer welfare based
4:13:16 20 on the true probabilities, taking into account any
21 externalities. But that's different than
22 minimizing social health costs.

23 Q. I'm just talking right now about, you
24 would understand that safer cigarettes, however,

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04:13:34 1 whether it was FDA-encouraged or imposed or whether
2 the industry created these cigarettes, would serve
3 the socially beneficial purpose of reducing
4 disease. Correct? Assuming that's what safer
04:13:50 5 means, that they don't cause as much disease as
6 other cigarettes.

7 Well, in terms of the externality it's
8 interesting that for low-tar cigarettes, which are
9 safer, at least I assume that the risk was
04:14:04 10 proportional to the tar levels, the social costs
11 are actually higher than with the high-tar
12 cigarettes. So what you mean by social cost is
13 often sometimes surprising.

14 Q. Actually, I didn't use the word social
04:14:22 15 cost. I said are socially beneficial because it
16 will kill fewer people and give fewer people
17 illnesses. That is a social benefit, is it not?

18 A. That is one aspect. But there are other
19 components to social effects, so that when you do
04:14:36 20 social effects you couldn't be myopic and just pick
21 out one component, that's all.

22 Q. I suppose death and illness may be myopic
23 in your worldview, but at least that is an
24 important social benefit of encouraging safer

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04:14:52 1 cigarettes? And I think you mention it in your
2 article. Fair enough?

3 A. I agree it's part of the picture, yes.

04:14:56 4 Q. I mean, economists don't always look at
5 dollars and cents, they also make judgments about
6 what is socially utilitarian; and certainly 420,000
7 people dying of smoking-related diseases must be of
8 some concern to economists no matter what the
9 financial implications. Fair enough?

4:15:14 10 A. I'm not sure what you mean by concern,
11 but it's something you would want to take into
12 account in evaluating the problem.

13 Q. And there is such a doctrine called, what
14 is it called, altruistic value? Are you familiar
4:15:24 15 with that?

16 A. I've done some work on that.

17 Q. What is altruistic value?

18 A. Where I may care about your well-being.

19 Q. Do you think people in this country
4:15:34 20 generally care about the well-being of 420,000
21 people who die every year from smoking? Is there
22 an altruistic value to having those people not
23 dead?

24 A. Some of the altruistic value, like within

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04:15:48 1 families, would presumably be internalized by the
2 smoker so that's already taken into account.
3 I think there may be some altruistic value.
4 There's certainly more altruistic value with
04:15:50 5 respect to people who are killed involuntarily as
6 opposed to people who voluntarily choose a risky
7 consumption activity.

8 Q. Have you placed a dollar value on the
9 value to smokers of smoking?

04:16:14 10 A. No. But we know that it's worth at least
11 as much as what they pay for the pack of
12 cigarettes. So I've done it to that extent and
13 I've placed a value on being able to continue to
14 smoke based on cigarette demand curves.

4:16:26 15 Q. How much is that?

16 A. I don't know. You'd have to look that up
17 in my article.

18 Q. It's probably billions. Correct?

19 A. It is billions.

4:16:36 20 Q. I think you've testified that the private
21 loss to smokers not being able to smoke in non-
22 smoking areas is computed at \$11 billion a year.
23 Is that correct?

24 A. I'm not sure if that's testimony. That's

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04:16:48 1 probably out of my article in Regulation magazine.
2 Q. Do you believe that's true?
3 A. If that's my number, I believe my number.
4 Q. That's per year, though? That number was
04:16:51 5 per year, right?
6 A. At that time, yes.
7 Q. Now, getting back to safer cigarettes,
8 you make the statement in your article, the Duke
9 Law Journal article, and that was published, was it
4:17:14 10 not?
11 A. Just came out.
12 Q. Right. I think the one I have may be
13 your draft. But it was published?
14 A. Yes.
4:17:22 15 Q. It's called Constructive Cigarette
16 Regulation. Is that right?
17 A. That's right.
18 Q. On page 131 of the document I've got you
19 make the following statement, and I have some
4:17:40 20 questions on it: "The most essential change that
21 I am proposing in FDA policy is to undertake a
22 constructive role in fostering technological
23 innovations to promote cigarette safety." Is that
24 your position?

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04:17:52

1 A. Yes.

04:18:00

2 Q. And is it your contention that the
3 government has to make the tobacco industry build
4 safer cigarettes and that the tobacco industry
5 itself hasn't been able to do it, has been
6 prevented to do it by government?

04:18:18

7 A. It is my contention that the government
8 has taken an antagonistic attitude toward all such
9 innovations.

10 Q. Including safer cigarettes?

11 A. Yes.

12 Q. And by the government you mean not only
13 the FDA but the Surgeon General?

14 A. That's correct.

4:18:26

15 Q. And all the people working for the
16 Surgeon General?

17 A. I don't know what every person working
18 for the Surgeon General thinks. But I do know what
19 shows up in the Surgeon General's reports and what
20 shows up in the media.

4:18:34

21 Q. Now, have you undertaken an effort to
22 review any company documents as related to the
23 development of safer cigarettes?

24 A. Just the RJR compendium of studies.

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4:18:52 1 Q. Well, for instance -- Are you making the
2 statement about the industry then, are you limiting
3 it to RJR, or do you include Philip Morris and
4 Lorillard and Brown & Williamson as industries or
4:19:00 5 companies that have been met with obstacles by the
6 government?

7 A. Yes, Philip Morris has developed a
8 de-nicotined cigarette; they developed the smoking
9 box. These innovations have also been met with
4:19:20 10 ridicule and opposition by government officials.

11 Q. Have they met with opposition within the
12 industry itself?

13 A. I don't know.

14 Q. Have you tried to find out?

4:19:26 15 A. No.

16 Q. Are you interested in knowing whether the
17 industry itself for its own internal reasons
18 squelched the development of safer cigarettes?

19 A. I don't think that internal reasons are
4:19:46 20 independent of market demand. So if there had been
21 a huge demand for the product and they could have
22 made lots of money off of it, I think that would be
23 an internal reason. That would become an internal
24 reason. So I'm not sure you can distinguish

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04:20:00 1 internal versus external reasons.

2 Q. Do you know of a reason that the tobacco
3 industry had, financial reasons, for not developing
4 and marketing this quote-unquote safer cigarette?

04:20:08 5 A. No.

6 Q. I take it you haven't read any documents
7 that describe the sentiment that if the tobacco
8 industry and particular companies develop a safer
9 cigarette, that it would implicate their unsafe
04:20:22 10 cigarette that they had been manufacturing and
11 subject them to product liability suits? Have you
12 considered that possibility?

13 A. Well, they did develop a safer cigarette
14 and they weren't sued because they had the Premier.

4:20:32 15 Q. Have you considered the possibility at an
16 earlier point in time the industry itself and
17 individuals within the companies felt that to
18 develop a safer cigarette would implicate their
19 unsafe cigarette and subject them to product
4:20:46 20 liability lawsuits by smokers who claimed, "Well,
21 you sold an unsafe cigarette to us"?

22 A. I'm not familiar with that.

23 Q. Are you interested in knowing what that
24 history is in order to make the judgment that it

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4:20:56 1 was the government who obstructed this as opposed
2 to the industry itself?

3 MR. ATKESON: Objection,
4 mischaracterizes testimony.

4:21:03 5 BY MR. WITHEY:

6 Q. I'm just asking if you're interested in
7 finding out that history.

8 MR. ATKESON: It's what you referred
9 to in the second half of the question I'm objecting
4:21:08 10 to.

11 MR. WITHEY: Okay.

12 From a research standpoint or because of
13 what I'm going to testify about in this case?

14 Q. From any standpoint. From a research
4:21:18 15 standpoint, to be sure.

16 A. I'm always interested in learning about
17 safer cigarettes.

18 Q. Are you interested in knowing that
19 history for the purposes of testifying?

4:21:26 20 A. I don't think that's why -- That's not
21 one of the subjects on which I'm testifying.

22 Q. So you're not going to offer any
23 testimony in this case that the FDA or the
24 government obstructed the efforts of the tobacco

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04:21:40 1 industry to develop a safer cigarette. Is that
2 correct?

3 A. I didn't say that. But I'm not going to
4 offer any opinions as to what the company was
04:21:48 5 thinking in 1950 or 1960. I don't know what they
6 were thinking.

7 Q. Well, I guess to make the judgment,
8 Dr. Viscusi, that the reason safer cigarettes
9 weren't developed related to government actions,
10 wouldn't you also want to, at least to be even-
11 handed, try to look at, well, were there elements
12 within the industry that also suppressed or
13 squelched the development of safer cigarettes, if
14 it was true?

15 A. For the time period I'm looking at they
16 did develop them and they were squelched by the
17 government.

18 Q. What time period are you referring to?

19 A. The Premier cigarette, the de-nicotined
04:22:26 20 cigarette from Philip Morris.

21 Q. The question was what time period.

22 A. 1980s and thereafter.

23 Q. Okay. For that time period are you
24 interested in knowing what the industry's conduct

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04:22:42 1 was toward safer cigarettes in the 1980s as to
2 whether they wanted to develop or didn't want to
3 develop safer cigarettes?

04:22:56 4 A. I'm not sure it's that relevant to what
5 I'm testifying about. I have a general
6 intellectual interest in the topic.

04:23:06 7 Q. Well, again, if you were to testify that
8 the reason safer cigarettes weren't developed was
9 because of government policy or obstruction of it,
10 wouldn't you also want to know during that relevant
11 time period, well, what did the industry want to do
12 about this, what conduct did they engage in, what
13 attitude did they have? Isn't that a way of just
14 kind of being even-handed so you don't just try to
04:23:22 15 attribute the suppression of this innovation to the
16 government?

04:23:32 17 A. No. I'm not testifying or my opinion is
18 not that the government opposition stopped them
19 from developing it. What I'm saying is that once
20 it was developed the government opposed it, which
21 contributed to the failure of these things to take
22 hold in the market.

23 Q. What's the evidence that the government
24 conduct or attitude contributed for it failing to

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04:23:48 1 take hold in the market? What's the evidence of
2 that?

3 A. Well, we have the various statements by
4 the Surgeon General attacking these products. By
04:23:50 5 failing to embrace them as being a safer cigarette
6 and by saying "We don't like these products, you
7 should quit smoking altogether," they essentially
8 blurred people's ability to make any distinctions
9 regarding relative riskiness which the cigarette
10 companies on their own could not convey to
11 consumers.

12 Q. What study or what report of the Surgeon
13 General made the statement about Premier?

14 A. I don't recall the years but I think
15 I cite it in my book.

16 Q. Were the Premier's prices higher than the
17 conventional cigarette?

18 A. No, they were priced the same.

19 Q. Actually, they were 15 to 20 percent
20 higher. Isn't that correct?

21 A. I thought they were priced the same, so
22 I don't know that they were actually higher.

23 Q. How long was the trial that RJR gave
24 Premier?

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04:24:46 1 A. I don't recall.

2 Q. Did you review any internal corporate
3 documents to explain how long they marketed the
4 cigarettes or why they marketed for the length of
04:24:54 5 time they did?

6 A. No.

7 Q. You've written, I think, that the taste
8 of the Premier was I think you used the term a
9 drawback?

10 A. It depends on, the menthol tasted better
11 than the regular Premier.

12 Q. Have you reviewed any of the or are you
13 aware of any of the reactions they got from the
14 test marketers of the Premier cigarette from
4:25:22 15 customers that were smoking it?

16 A. I've discussed those with RJR officials.
17 I've also tested Premier cigarettes out on various
18 friends of mine, including smokers, gotten their
19 reactions.

4:25:34 20 Q. And what did the test marketers disclose
21 was the reaction to the cigarettes, some of the
22 reactions?

23 A. You know, there's some surprise that you
24 had to light it with a lighter. You know, it

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04:25:48 1 didn't draw exactly like a conventional cigarette
2 did. It didn't taste exactly the same.

3 Q. In fact, didn't the marketers -- Maybe
4 you haven't reviewed these documents, but Reynolds
04:26:00 5 test marketers said that Premier smelled like
6 burning garbage and tasted like shit. Are you
7 familiar with that description?

8 A. I heard like one or two anecdotes like
9 that, but I'm not sure these characterize
04:26:12 10 everybody's reaction.

11 MR. WITHEY: Let's go off the record.

12 THE VIDEOGRAPHER: This ends tape
13 number 3 in the deposition of W. Kip Viscusi.
14 Going off the record. The time is 4:26.

15 (Pause)

16 THE VIDEOGRAPHER: This begins tape
17 number 4 in the deposition of W. Kip Viscusi.
18 Going on the record. The time is 4:30.

19 BY MR. WITHEY:

20 Q. Sir, have you attempted to look at any of
21 the publicly available materials on the results of
22 RJR's marketing of their Premier cigarette?

23 A. I read them at the time and I've read
24 since then some of the Surgeon General's reports

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4:31:16 1 and so on.

2 Q. Have you read the book Barbarians At The
3 Gate, The Fall Of RJR Nabisco?

4 A. No, but I saw the movie.

4:31:26 5 Q. Do you understand that various news
6 outlets including -- I think you're from North
7 Carolina -- the Greensboro News & Record reported
8 that the Premier tasted like singed hair? Are you
9 familiar with that?

4:31:42 10 A. No. I know there were some complaints
11 about the taste.

12 Q. Some complaints. How about the report
13 in, The St. Petersburg Times did a study saying
14 "Consumer gives smokeless cigarette unfavorable
4:31:58 15 reviews, quote, 'It tastes like burning plastic'."
16 Were you familiar with that?

17 A. No. But I'm not sure whether that was
18 the regular or the menthol.

19 Q. Are you familiar with the AP story in
4:32:12 20 September of 1988 that smokeless cigarettes get
21 varied marks in informal taste tests, stating that
22 Premier smelled like a tennis shoe burning? Are
23 you familiar with that report?

24 A. No, but I have smelled the Premier

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04:32:26 1 burning and none of these statements brings to mind
2 how I thought it smelled.

3 Q. How about someone who is quoted as saying
4 when lit with a match the Premier smelled like a
04:32:40 5 fart? Would that be a pretty unbalanced and unfair
6 characterization?

7 A. I don't think it's accurate.

8 Q. Do you know who said that?

9 A. No.

04:32:46 10 Q. Do you know who Ross Johnson is?

11 A. Well, wasn't he head of RJR at that time?

12 Q. Right. Are you familiar with the quote
13 that he gave about it smelling like a fart?

14 A. That may be a flamboyant characterization
04:32:58 15 but I don't think it's accurate.

16 Q. Premier didn't have any ash and there
17 wasn't anything to flick for the smokers. Correct?

18 A. That's right.

19 Q. So it's fair to say that the Premier
04:33:14 20 really didn't have the look and feel of a
21 conventional cigarette, at least in that sense.

22 Right?

23 A. Well, it did have the look and feel but
24 it didn't have the ash and it didn't have the

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04:33:22 1 taste. But it did have the nicotine. So to the
2 extent that people say that they smoke because they
3 want to do something with their hands and they need
4 the nicotine, it did both of those things.

04:33:30 5 Q. Well, there are other things that you can
6 use to get nicotine that has no risk of lung cancer
7 or emphysema or heart disease. Correct?

04:33:38 8 A. Right. But the delivery system matters
9 as well in terms of how it affects you.

04:33:52 10 Q. Are you familiar with, have you done any
11 research on the development of alternative nicotine
12 products and the impact of the industry on
13 suppressing that market?

04:34:02 14 A. No.

04:34:02 15 Q. Don't you think that rather than FDA
16 jurisdiction, that a competitive market would
17 produce safer cigarettes?

04:34:14 18 A. No, because you can't make health claims
19 with respect to cigarettes. It's a risky product
20 and you can't go out there and make health claims
21 independent of having the government certify them.

22 Q. Well, you can certainly -- Well, let me
23 ask you this: Are you familiar with ways in which
24 other alternative products have replaced products

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04:34:36 1 that are harmful in our society generally?

2 A. Give me some examples of what you're
3 talking about.

4 Q. Asbestos.

04:34:44 5 A. Yeah, we banned asbestos and have OSHA
6 and EPA regulations that mandated the level of
7 asbestos fiber concentration to very low levels,
8 which is going to lead other products to take their
9 place

04:34:58 10 Q. And you agree, do you not, and I'll quote
11 your article if need be, that the history in some
12 aspects of American ingenuity and innovation has
13 itself, even without government involvement, led to
14 safer products, improved product safety, including
4:35:18 15 in the automobile industry, et cetera. Fair
16 enough?

17 A. Yes, innovation has led to safer
18 products, yes.

19 Q. Oftentimes, however, that innovation has
4:35:32 20 led to the replacement of unsafe products by safer
21 products. Correct?

22 A. Yes. As we have become richer we've
23 demanded safer products and companies have
24 innovated them that way.

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04:35:42 1 Q. And that is as opposed to merely having a
2 safe product and an unsafe product marketed at the
3 same time. Fair enough?

04:35:52 4 A. So some products become safer over time?
5 Is that what you're saying?

6 Q. No. That where a safer product exists,
7 the manufacturer substitutes the safer product and
8 discontinues the unsafe product. That's certainly
9 been a feature of --

04:36:02 10 A. That can happen.

11 Q. And could you give me some examples?

12 A. Develop a new model of car that locates
13 the gas tank in a different place to be safer.
14 Introduce antilock brakes, that becomes a safer
15 car. Install guards on machines, that becomes a
16 safer machine.

17 Q. How about installing seat belts? That
18 replaced the car that didn't have seat belts.
19 Right?

04:36:34 20 A. There is controversy in the literature of
21 whether that had an increased effect on safety.

22 Q. Really?

23 A. Yes, really.

24 Q. Controversy in the literature as to

W. Kip Viscusi, Ph.D.

04:36:42 1 whether adding seat belts had an impact on safety
2 in crashes?

3 A. You heard me correctly.

4 Q. Oh, my God! Okay. What's the basis --
04:36:52 5 I'm very interested. What's the basis of that?

6 A. It's not my research. But people have
7 found that once people buckle up their seat belts
8 they tend to drive faster and kill more
9 motorists and pedestrians, thus offsetting at
10 04:37:12 least to some extent and some people say totally
11 offsetting the safety effects of seat belts.

12 Q. Who says that?

13 A. Sam Peltzman, a professor at the
14 University of Chicago; Glenn Blomquist, professor
15 4:37:22 at the University of Kentucky.

16 Q. Both of those individuals say that the
17 adverse effect of driving faster because you have
18 seat belts offsets the savings of seat belt use to
19 motorists in crashes?

20 4:37:34 A. That's correct.

21 Q. Peltzman?

22 A. Peltzman, P-e-l-t-z-m-a-n.

23 Q. And who else?

24 A. Glenn Blomquist, B-l-o-m-q-u-i-s-t.

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04:37:56

1

Q. That's a new one on me.

2

Are you familiar with the history of Liggett's efforts to develop a safer cigarette?

3

A. No.

04:38:22

5

Q. Are you familiar with the testimony of any of the former or current lawyers or CEOs in Liggett as to what occurred when they were about to market a safer cigarette?

9

A. No.

4:39:08

10

Q. Would you agree that FDA regulations in this area would be what -- Well, what would you believe would be FDA regulations in the area of a safer cigarette?

14

A. Doesn't matter to me which government agency does it.

4:39:20

15

16

A. Okay.

17

A. What I would like to have is comparative risk ratings of cigarettes so that consumers could distinguish the relative risks of smoking Premier versus Marlboros versus Lark, Merit, whatever brands.

4:39:34

20

21

22

Q. What would the difference between Merit and let's say Marlboros be in risk?

23

24

A. I don't know what the true answer is.

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W. Kip Viscusi, Ph.D.

04:39:48 1 But they would make a judgment if, for example,
2 they thought tar levels were a sufficient indicator
3 of risk, that could be an input to it. May not be
4 linear, but they could make whatever judgments they
04:40:00 5 thought were appropriate based on the literature.
6 Or they could develop some other measure.

7 Q Well, based on what kind of literature
8 would we need to know what the lifetime risks of
9 smoking Merits are versus smoking Marlboros are,
04:40:16 10 what kind of evidence, and how long would that
11 evidence take to gather?

12 A There's a whole lot of cancer potency
13 tests you can do without tracking things over time.
14 Bruce Ames has done these things for everything
04:40:30 15 from apples to pears to lettuce, so these kinds of
16 things can be done.

17 Q By looking at the carcinogens that remain
18 in the Merit and assessing their potential --

19 A Testing the various substances and their
04:40:40 20 carcinogenic potency.

21 Q Wouldn't you want to know how people use
22 the cigarette in the market, in other words, what
23 different smoking habits they may have with it, in
24 order to test it?

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04:40:52 1 A. The government can presumably run tests
2 of that as well.

3 Q. And would such people be human research
4 subjects in experimentation the government would
04:41:04 5 run? There would have to be informed consent.
6 Correct?

7 A. Yes. I would be happy to have the
8 government handle that rather than the cigarette
9 companies.

04:41:18 10 Q. And do you believe that market forces
11 play a role, would play a role in product
12 innovation as it relates to safer cigarettes and
13 should play a role?

14 A. If nobody wants them, nobody's going to
4:41:34 15 produce them. So by rating the comparative
16 riskiness of cigarettes, then you would know which
17 products consumers demanded.

18 Q. Have you made any attempt to look at the
19 issue of antitrust violations by the industry?

4:41:48 20 A. No.

21 Q. You've published in that field of
22 antitrust, have you not?

23 A. I have a textbook on regulation in
24 antitrust, but I haven't done anything on antitrust

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04:42:00 1 issues for the cigarette industry. And I generally
2 do regulation, not antitrust.

3 Q. Okay. But --

04:42:00 4 MR. ATKESON: I will just note he's
5 not designated in that area by us.

6 MR. WITHEY: Okay.

7 BY MR. WITHEY:

04:42:26 8 Q. But you generally understand at least
9 from the economic standpoint as an economist that
10 the suppression or cartel to suppress product
11 innovation can in fact be an antitrust violation.
12 Correct?

13 A. That sounds like a legal judgment.

4:42:38 14 Q. Well, have you made that judgment as an
15 economist, that anticompetitive conduct to suppress
16 product innovation restricts the market in those
17 innovative products?

18 A. I've never been involved in such a case.
19 I've never done this.

4:42:50 20 Q. Are you familiar with the concept?

21 A. Yes.

22 Q. And are you familiar with industries that
23 have in fact combined to suppress product
24 innovation?

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4:43:00 1 A. No. This isn't what I do.

2 Q. And I take it by the same token you've
3 made no effort to determine whether the industry,
4 the tobacco industry, engaged in a cartel or
5 combination or conspiracy or agreement to not
6 develop and market safer cigarettes. Correct?

7 A. That's correct.

8 Q. Now, if through FDA regulation or
9 regulations there were to be labels indicating the
10 absolute relative risk of smoking and I assume
11 based upon reduction in tar levels, would you agree
12 that it would be important to assess whether the
13 people smoking those cigarettes consumed more or
14 less tar as a result of the habits and choices that
15 they made even if the cigarette itself had less tar
16 than other cigarettes? In other words, look at the
17 compensation effect.

18 A. If there's evidence that that's
19 important, then that could be another aspect that
20 the government could take into account in their
21 risk rating. It depends a lot upon is this
22 something that you can tell people to avoid, so is
23 this like you tell people not to wear rubber gloves
24 and you can avoid this behavior. Or is this

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04:45:00 1 something that's going to be automatic. So it
2 depends on the character of the behavior what you
3 want to tell them.

04:45:10 4 Q. Would you agree there's a number of
5 different forms of regulation that government or
6 the society can impose?

7 A. There are lots of different kinds of
8 regulation.

04:45:20 9 Q. One might be called command and control,
10 that is, ordering or requiring a company to do a
11 specific act such as you can't sell cigarettes, for
12 instance?

13 A. That's correct.

14 Q. Another might be a form of performance-
15 based regulation. Fair enough?

16 A. That's correct.

17 Q. A lot of the automotive industry involves
18 performance-based regulation?

19 A. A lot of specification standards too.

04:45:30 20 Q. Well, but they don't tell the
21 manufacturer in a command-and-control way how
22 exactly to meet the specifications, they just set
23 the specifications that they're required to meet.
24 Right?

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4:45:48 1 A. Well, the bus standards are tantamount to
2 designing the whole bus.

3 Q. Well, that's a good point. But in most
4 automobile cases it's not. You have to put the gas
4:45:50 5 tanks inside the frame or else they tell them you
6 have to have adequate crush space or words to that
7 effect.

8 A. Right.

9 Q. Now, are you familiar with the concept of
4:46:06 10 ex post incentive-based regulation?

11 A. I've seen it written about.

12 Q. You understand that the civil liability
13 system is a form of ex post incentive-based
14 regulation. Correct?

4:46:16 15 A. Yes.

16 Q. And the notion there is that the civil
17 liability, to the extent to which it imposes
18 liability on a particular company to require them
19 to reinternalize, if you will, costs of doing
4:46:32 20 business, will then act through the market in order
21 to promote its own regulation, regulate itself?

22 A. If the costs are anticipated ex ante.

23 Q. Right. But is it fair to state that the
24 tobacco industry from the earliest years, from '53

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04:46:52 1 on, anticipated the possibility of product
2 liability suits directed at its product?

3 MR. ATKESON: Objection, calls for
4 speculation.

04:47:00 5 A. To say that they anticipated some
6 lawsuits, sure.

7 Q. In fact, are you aware -- I don't know if
8 you've looked at this from an economic standpoint,
9 but are you aware that when the SEC required 10-K
04:47:14 10 filings, that the tobacco industry would put on
11 their books as contingent liabilities the product
12 liability suits that had been brought against them?

13 A. I'm not aware of what they put on their
14 books.

04:47:22 15 Q. Well, customarily companies have to do
16 that, right, list their contingent liability
17 lawsuits on their annual statement or their SEC
18 filings? You're familiar with that?

19 A. Yes, but I didn't know when they had
04:47:30 20 these contingent liabilities.

21 Q. You would believe that when they had
22 them, if they had lawsuits pending, that they would
23 be on their books in that sense. Fair enough? If
24 they were required to do it.

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14:47:40 1 A. If they're required to do it, I assume
2 they do whatever they're required to do.

04:47:50 3 Q. And so they anticipated by listing them
4 as contingent liabilities that they might be
5 required to pay for either the medical costs or
6 pain and suffering of the particular smoker that
7 was bringing the lawsuit or entity that was
8 bringing the lawsuit. Fair enough?

04:48:00 9 A. Weighted by the probability that they
10 thought they would lose.

11 Q. Well, do you think the SEC filings
12 actually weight it as opposed to just stating that
13 this lawsuit has been filed?

4:48:14 14 A. When the company -- You're asking when
15 the company makes its decisions in terms of the
16 incentives, the incentives are going to be guided
17 by the probability that they think they would lose,
18 and those probabilities have heretofore been very,
19 very small.

4:48:26 20 Q. And now they're extremely large.
21 Correct?

22 A. Well, for the state suits. We don't know
23 if it's ever going to go beyond the states.

24 Q. At any rate, the concern about the

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04:48:40 1 potential that such things as the medical costs of
2 smokers or their pain and suffering might be
3 imposed upon the industry was a financial factor
4 guiding their economic judgment in the times in
04:48:52 5 which they had been sued. Fair enough?

6 A. I don't know to the extent that it had
7 any significant effect.

8 Q. Well, that's because you haven't looked
9 at the documents to indicate what effect it had.
04:49:02 10 Fair enough?

11 A. The documents don't tell you the effect
12 it had.

13 Q. Well, the documents tell you the
14 perceived effect of the product liability suits and
04:49:10 15 the manufacturer's concern about it. Fair enough?

16 A. The documents can tell you what claims
17 have been filed, but they don't tell you the
18 probability that they think they're going to lose.

19 Q. I'm talking about not only the SEC
04:49:26 20 filings but -- Well, actually I thought you said
21 that they did have some discussion of the
22 probability they might lose.

23 A. No, that would be internally. The
24 company officials would want to take that into

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04:49:36 1 account when they made the decision to alter what
2 they're doing.

3 Q. Okay.

4 Did you understand, then, that
04:49:44 5 lawyers were involved in the issue of smoking and
6 health and what was said publicly to the public
7 about the risk of tobacco smoking?

8 A. I assume to the extent that all public
9 statements involve regulatory issues or liability
04:50:00 10 issues, that the lawyers would be involved.

11 Q. Have you heard of the Committee of
12 Counsel?

13 A. No.

14 Q. Have you read any documents, internal
04:50:12 15 legal department documents that refer to the role
16 of lawyers in the issue of what was to be published
17 publicly about the health effects of smoking?

18 A. I don't recall doing so.

19 Q. Have you heard of the Jones Day
04:50:32 20 memorandum or the fact memorandum or the history of
21 their involvement in the tobacco industry? Have
22 you heard of those documents coming forward in the
23 Minnesota case?

24 A. I don't recall any of them.

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04:50:42 1 Q. Have you read anywhere, in the newspaper
2 or on the net, or have you heard from counsel that
3 39,000 documents were released by Judge Fitzpatrick
4 as amounting to criminal fraud by the attorneys,
04:50:58 5 thus justifying exception to the attorney-client
6 privilege in that case?

7 A. I don't know why he released the
8 documents but I know that numerous documents were
9 released.

04:51:06 10 Q. Have you asked to review any of those to
11 determine what role the lawyers played in public
12 dissemination of information by the tobacco
13 industry?

14 A. No.

04:51:18 15 Q. You're not interested in what's in those
16 documents. Is that correct?

17 A. I'm interested only in what the public's
18 risk perceptions are.

19 Q. Not what the tobacco industry decided to
04:51:28 20 tell the public versus not tell the public, you're
21 not interested in that. Fair enough?

22 A. I have seen no reason to get involved in
23 that issue.

24 Q. Well, if you don't see the documents, you

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4:51:38 1 couldn't see that there would be any reason. If
2 you looked at the documents, you might see a
3 reason. Fair enough? If you don't know what's in
4 the documents, how can you say there is any reason
5 to be involved?

4:51:48 6 A. For my time periods I'm assessing
7 people's risk perceptions versus the government's
8 assessment of what they think the true risks are,
9 so I see no reason to delve into industry documents
10 about press releases or other matters.

4:51:58 11 Q. Well, for the time period that you're
12 testifying, that starts in 1985 and ends in 1998.
13 Correct?

4:52:08 14 A. That's the set of time periods for my
15 surveys.

16 Q. Now, have you made any assessment of what
17 the benefits of smoking are to society, if any?

18 A. We already discussed that in terms of the
19 willingness to pay of smokers for cigarettes.

4:52:28 20 Q. Anything else?

21 A. That's the main benefit to smokers. And
22 I've calculated the net external financial cost to
23 society as well.

24 Q. That is, the external cost to society

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04:52:46 1 being smokers die earlier and then they don't incur
2 or they do not incur future medical benefits,
3 they're not paid retirement or Social Security, and
4 they don't consume nursing care utilization?

04:53:14 5 A. Also medical costs and fires. I include
6 all of these things.

7 Q. Right. I thought I mentioned that, but
8 you're right.

9 Now, those are benefits that derive
04:53:14 10 from smokers dying early. Correct?

11 MR. ATKESON: You left out excise
12 taxes, too. That's the one you didn't put in there.

13 MR. WITHEY: Okay.

14 BY MR. WITHEY:

04:53:27 15 Q. Other than excise taxes, the ones you
16 mentioned were those that are incurred by smokers
17 dying early, prematurely. Correct?

18 A. Well, if you're going to count the
19 medical care consequences, then you'd want to
04:53:36 20 calculate what happened. So it's not just dying
21 early, it's a different incidence pattern of
22 different diseases over time that you would want to
23 take into account. Smokers get different things at
24 different time periods, not just earlier; different

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4:53:48 1 things.

2 Q. Right. I'm just saying, I'm just asking
3 you: Other than those quote-unquote benefits to
4 society which some may quarrel are benefits, but do
5 you know of any other benefits to society from
6 smoking?

7 A. Well, I've never claimed any of the
8 reduction in external cost was a benefit. The only
9 thing I've ever called a benefit was the benefit
10 smokers themselves derive. Everything else is just
11 simply the consequences of proper accounting for
12 the cost implications of cigarettes.

13 Q. So the benefits that smokers derive is a
14 private benefit, not a public one. Correct?

15 A. Private as well as social because people
16 are part of society as well.

17 Q. What percentage of the \$11 billion,
18 assuming that my statement is accurate, of smokers
19 not being able to smoke in public places is a
20 private benefit versus a public benefit?

21 A. It's both. All of that is private plus
22 public. So if I derive a private benefit of a
23 dollar, that's also a social benefit as well. That
24 counts.

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04:55:16 1 Q. Well, don't economists, though, try to
2 separate out what is a private benefit from what is
3 a social benefit and if something is only a private
4 benefit, describe it as such, and something that
04:55:28 5 has both components, describe it as such?

6 A. Both components would be social; there
7 could be externalities which are only social.
8 There are private benefits that are both private
9 and social.

04:55:48 10 Q. I may have asked you this; if so,
11 I apologize, but I don't remember the answer.
12 Would the let's call it reinternalization of the
13 medical costs of smoking onto the tobacco industry
14 or -- let's put it a different way. Would the
04:56:04 15 internalization of the medical costs of smoking
16 from the third-party payors or the government back
17 to the tobacco industry create a financial
18 incentive for the industry to produce safer
19 products?

04:56:18 20 MR. ATKESON: Asked and answered.

21 You did ask it. It's all right, he'll answer it.

22 MR. WITHEY: You might be right, but
23 I prefaced it by saying....

24 MR. ATKESON: I understand that.

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4:56:28 1 A. The proper tax from the social standpoint
2 is all the social costs. You can't pick and choose
3 a cost to the union as opposed to costs to the
4 State of Ohio as opposed to costs to the federal
5 government. You want all the social costs. And
6 these net social costs do not involve a loss to
7 society.

4:56:38 8 Q. Does the imposition of social costs, as
9 you put it, on the tobacco industry of necessity
10 involve them passing that cost on to the consumers
11 through higher prices?

4:57:02 12 A. All costs that are marginal costs will
13 affect the supply curve for cigarettes and the
14 costs will be shared between consumers and the
15 producers.

4:57:12 16 Q. Is there a percentage in the tobacco
17 industry case as it relates to excise taxes that is
18 shared by them, the tobacco industry, versus
19 smokers?

4:57:24 20 A. I don't know the percent, but it is a
21 very high percentage borne by consumers.

22 Q. And by high, can you quantify that in any
23 way?

24 A. I wouldn't want to guess, but very high.

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04:57:44 1 Well over half.

2 MR. WITHEY: Why don't we break. I'm
3 at a breaking point. Let me just review my notes.

4 We do have a right to take this

04:58:00 5 witness's deposition for another half a day.

6 Whether we choose to exercise that right I'll let
7 you know. But for the record, I want to get the
8 three days he's available in January so we can link
9 them up with Dr. Harris.

04:58:12 10 MR. ATKESON: To the extent he gets
11 that e-mail to me tomorrow morning I will call in
12 here and give those to you.

13 MR. WITHEY: All right. Hold on a
14 second. Let me just see if there's anything else.

04:58:50 15 (Pause)

16 BY MR. WITHEY:

17 Q. Let me ask you, would you agree that to
18 the extent to which the industry perceived that
19 there was a risk, a health risk from smoking, that
20 they had a financial incentive not to disclose that
21 health risk to the public because of fear of
22 litigation?

23 A. I don't --

24 MR. ATKESON: Objection, calls for

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04:59:26

speculation.

A. I don't know how that plays out.

05:00:20

Q. Would you agree that the tobacco industry, to the extent to which it disagreed with the assessment of the Attorney General of the relative risks or even absolute risks of smoking --

MR. ATKESON: Surgeon General you mean, don't you?

MR. WITHEY: I thought I said Surgeon General.

MR. ATKESON: No, you said Attorney General. Sorry.

MR. WITHEY: Let me start the question over again.

5:00:52

BY MR. WITHEY:

Q. Assuming that the tobacco industry's consolidated position was that the health risks of smoking had not been proven, that there was no proof to that, for them to state as you put it in their labeling and packaging the absolute risk of --

5:01:12

MR. WITHEY: I'm going to withdraw the question; try it another day. Let's go home.

THE VIDEOGRAPHER: This concludes

W. Kip Viscusi, Ph.D.

05:01:26 1 the December 14, 1998 portion in the deposition of
2 W. Kip Viscusi. The number of tapes used today
3 were four. The original videotapes will be
4 retained by Jones Fritz & Sheehan.

05:01:36 5 Going off the record. The time is

6 5:01.

7 (Deposition adjourned at 5:01 p.m.)
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County of Suffolk)

I, J. Edward Varallo, Registered Professional Reporter and Notary Public in the Commonwealth of Massachusetts, hereby certify that there came before me on December 14, 1998, at the time and place specified above, W. Kip Viscusi, Ph.D., the deponent herein, who was duly sworn by me to testify to the truth and was thereafter examined under oath by counsel.

I certify that the questions asked of the deponent and the answers given were taken down by me stenographically and transcribed by me using computerized translation software; and that the foregoing is a true and accurate transcript thereof.

I certify further that I am not counsel, attorney, or relative of any party litigant, nor otherwise interested in the event of this suit.

J. Edward Varallo, RPR, RMR

DATED: _____ My Commission Expires 01/11/2002